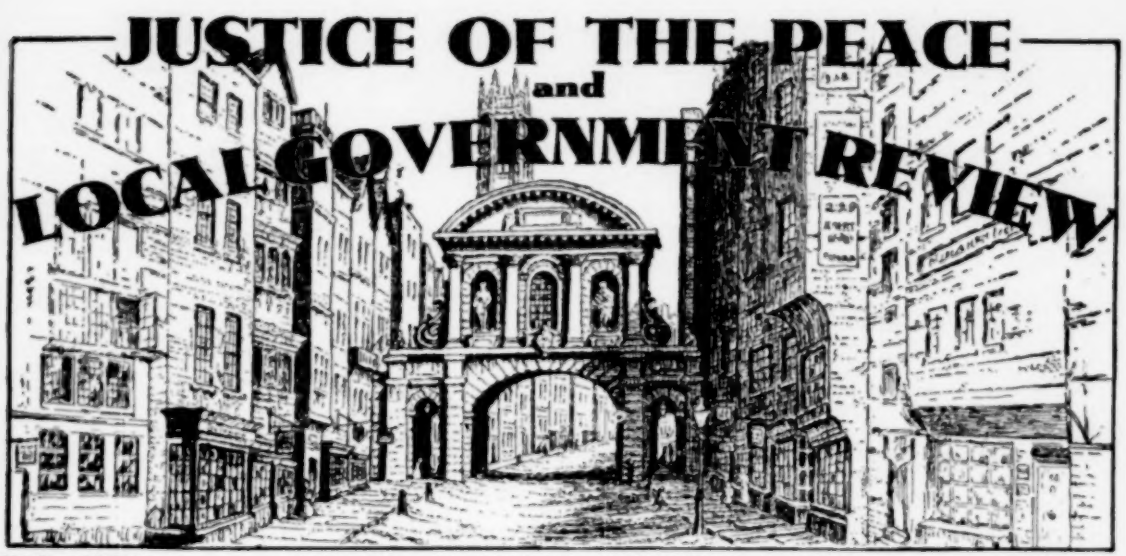

VOL. CXIV. LONDON: SATURDAY, NOVEMBER 4, 1950. No. 44

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Official Advertisements, Tenders, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Miscellaneous Advertisements 24 words 6s. (each additional line 1s. 6d.) Box Number 1s. extra. *Latest time for receipt—9 a.m. Wednesday.*

RURAL DISTRICT COUNCIL OF EPPING

Solicitor/Deputy Clerk

APPLICATIONS are invited for this appointment at a commencing salary within A.P.T. Grade VII (£635 to £710 per annum).

The district is developing rapidly with the building of a New Town, and the appointment offers excellent opportunities.

If necessary the Council will assist in securing housing accommodation and pay removal expenses.

Further details may be obtained from the undersigned. Applications should be received by November 20, 1950.

G. BOWDEN,
Clerk of the Council.

209, High Street,
Epping.

APPLICATIONS are invited for the appointment of Warden and Matron (joint post) at the Church of England Police Court Mission Boys' Approved Hostel, Leeds—age group 16-19. Previous experience in handling boys essential. C. of E. Communicants preferred. Present maximum salary £550 per annum less deductions for board and accommodation. Forms of application may be obtained from the Secretary of the Managing Committee, Ripon Diocesan Police Court Mission, 18, Queen Square, Leeds, 2.

COUNTY OF NOTTINGHAM

Borough of Newark; Petty Sessional Division of Newark; Petty Sessional Division of Southwell

Appointment of First Assistant to Clerk to the Justices

APPLICATIONS are invited for the above full-time appointment. Applicants must have a thorough knowledge of the work of a Justices' Clerk's office, including the issuing of process, the keeping of accounts, the taking of depositions and be capable of acting as Clerk to the Court if required. The applicant must be an experienced typist and experience in shorthand would be an advantage. The salary will be on Grades III and IV of the A.P.T. Division of the National Joint Council Scale, namely £450 × £15 to £525 per annum and the commencing salary will be fixed within those Grades according to experience. The appointment will be subject to one month's notice on either side and will be also subject to the provisions of the Local Government Superannuation Act, 1937, the successful candidate being required to pass a medical examination.

Applications, stating age and experience, together with copies of two recent testimonials, must reach Mr. R. Neville Ross, Clerk to the Justices, Town Hall, Newark, not later than Saturday, November 18, 1950.

K. TWEEDALE MEABY,
Clerk of the Standing Joint Committee.

Shire Hall, Nottingham.

COUNTY BOROUGH OF WEST HAM

Appointment of Assistant Solicitor

APPLICATIONS are invited for appointment of Assistant Solicitor, Salary A.P.T. VII/VIII, £635 to £760 (plus London Weighting £20-£30 according to age)—with commencing salary according to experience. Experience in Town Planning work an advantage.

Forms of application with further details may be obtained from me and must be returned by November 11, 1950, accompanied by two recent testimonials.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

HERTFORDSHIRE County Council. Applications are invited from women for the post of Assistant Children's Officer at a salary within A.P.T. Grade V(£520—£570 per annum). The successful applicant will be required to supervise the work of the area Children's Visitors, to advise on the placing of individual children and to do some specialised case work. Applicants must possess a Social Science Diploma or equivalent qualification and have had considerable experience of home visiting. Applications, giving age, qualifications and experience, and the names of two referees, should be sent to the Children's Officer, Children's Department, County Hall, Hertford, not later than November 21, 1950.

NORTH WEST WALES RIVER BOARD

APPLICATIONS are invited for the appointment of a Chief Clerk on the staff of the above Board, which has lately been established under the River Boards Act, 1948, and is responsible for land drainage works, the prevention of river pollution, fisheries and other duties under the Act.

Applicants should have had good accountancy and book-keeping experience. Knowledge of shorthand and typewriting will be an advantage. The salary will be in accordance with A.P.T. Grade V of the National Salary Scales. The appointment will be on a whole-time basis and will be subject to the Local Government Superannuation Act, 1937, and to the National Scheme of Conditions of Service.

Applications in writing, stating (*a*) age, qualifications, experience and particulars of present employment, (*b*) when the applicant would be free to take up employment, and (*c*) the names and addresses of three referees, should be made to the undersigned not later than November, 25 1950.

GWILYM T. JONES,
Acting Clerk to the Board.

County Offices,
Caernarvon.

October 27, 1950.

BOROUGH OF BRENTFORD AND CHISWICK

Appointment of Assistant Solicitor

At a salary according to Grade VIII of the A.P.T. Division Scale of the National Scheme of Conditions of Service (*viz.*, £685 to £760 per annum, plus London Weighting according to age), commencing first year. Applicants must be experienced in advocacy and conveyancing, and knowledge of municipal law and practice will be an advantage.

The appointment will be subject to (*a*) provisions of the Local Government Superannuation Act, 1937, (*b*) National Scheme of Conditions of Service and (*c*) satisfactory passing of a medical examination.

Applicants, stating age, qualifications and experience, and giving names and addresses of two referees, should be addressed to the undersigned to be received not later than November 20, 1950.

Candidates must, when making application, disclose in writing whether they are related to any member or senior Officer of the Council, and canvassing directly or indirectly will disqualify.

W. F. J. CHURCH,
Town Clerk.

Town Hall,
Chiswick, W.4.

BOROUGH OF SUTTON AND CHEAM

Town Clerk's Department

APPLICATIONS are invited for a Legal Clerk Grade A.P.T. III (commencing £450 per annum rising by annual increments of £15 to £495 per annum) plus £30 per annum London "weighting". General legal experience, particularly in the preparation of contracts and conveyancing, essential. Local Government experience desirable.

The appointment is subject to the National Conditions of Service, the Local Government Superannuation Act, 1937, and to one month's notice on either side.

Applications, stating age, qualifications, experience, present and past appointments, enclosing copies of three recent testimonials, and stating whether, to his knowledge an applicant is related to any member of, or the holder of, any senior office under the Council, must be received in appropriately endorsed envelopes by the undersigned not later than 12 noon on November 17, 1950.

Canvassing, either directly or indirectly, will disqualify.

A. PRIESTLEY,
Town Clerk.

Municipal Offices,
Sutton, Surrey.

SITUATION VACANT

BUSY Common Law firm, Bradford, Yorkshire. Partner requires qualified or unqualified personal assistant to work alongside with him with only slight supervision in the preparation of cases for assizes, sessions, police court and in the general conduct of common law department. Salary commensurate with experience and ability. Every prospect of advancement. Pension scheme. House found if necessary. Write Box B.22 Office of this Paper.

Justice of the Peace
and
Local Government Review

[ESTABLISHED 1857.]

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NOTES of the WEEK

Absent Magistrates

We have received information that at a juvenile court in a country district recently the proceedings could not be commenced because no magistrate appeared. There were five cases on the list, involving the attendance of about twelve people plus the clerk, his assistant, and eight other persons whose duties required them to be present. After a wait of forty minutes it was announced that no magistrate was available and that nothing could be done. We are told that a similar position arose in September and that some thirty people were kept waiting for an hour and a half because no magistrate attended. On that occasion magistrates eventually attended from two neighbouring places and the court was duly held.

We do not think it is right for us to discuss here why these unfortunate incidents occurred. There may or there may not have been some reasonable explanation on either or both occasions. But we do think that whoever is responsible for making arrangements to secure the attendance of magistrates should expect difficulties sometimes to arise and should be prepared in some way to meet them so as to avoid what is a most regrettable occurrence, putting members of the public to quite unreasonable inconvenience. Moreover justices, having undertaken duties which are admittedly at times quite burdensome, must surely realize that only the gravest emergency can justify their not arriving to take their part in proceedings of which they have had due notice, and which cannot be conducted without them. We repeat that we are not presuming to criticize anyone in particular. On both occasions there may have been an unfortunate chapter of accidents which no one could have foreseen or been prepared to deal with, but we hope that it will be possible to make plans to avoid any such occurrence in the future.

The Hallmarking of Wedding Rings

A judgment given by Mr. Justice Pritchard in the case of *Westwood* v. *Cann* (*The Times*, October 4, 1950) is of interest in that His Lordship decided that wedding rings of nine, fourteen, eighteen or twenty-two carat gold must not be offered for sale unless they are duly hallmarked. The case involved the consideration of the Plate (Offences) Act, 1738, the Gold Plate (Standard) Act, 1798, and of two more "modern" statutes the Gold and Silver Wares Act, 1854, and the Wedding Rings Act, 1855. The Act of 1738, by s. 6, exempted rings, *inter alia*, from the requirements as to hallmarking, and the 1798 Act and the 1854 Act left that exemption untouched. But the Act of 1855, of which only s. 1 now remains, enacts that "gold wedding rings shall be assayed and marked in like manner as gold plate not exempted as required by the statutes now in force to be assayed and marked; and all the provisions of the statutes relating to the manufacture or sale of gold plate shall apply to gold wedding rings, anything therein contained to the contrary notwithstanding."

For the defence it was argued that the effect of that Act was that gold wedding rings could not lawfully be made below the eighteen carat standard, and that any rings of a lesser standard did not come within the provisions relating to the marking of gold plate. But His Lordship decided that the combined effect of the statutes cited and of the Gold Wares (Standard of Fineness) Order, 1932, was that gold wedding rings were in the same position as other gold wares, and if made of any of the four standards permitted by law (nine, fourteen, eighteen or twenty-two carat) they must not be offered for sale unless appropriately marked.

The result of the decision was that His Lordship held that the plaintiff had established his right to recover, in respect of each of six rings illegally exposed for sale, the penalty of £50 provided by s. 6 of the Act of 1798. By s. 22 of the 1738 Act, as applied by s. 8 of the 1798 Act, penalties are to be recovered by action in what is now the High Court. Half of such penalties go to the Crown and the other half to the person who sues for them.

The Illegal Docking of Horses

There has been reported in the press what is described as being probably the first case in this country brought under the Docking and Nicking of Horses Act, 1949. In the case in question the offender exhibited at the Royal Welsh Show at Abergele two foals which had been docked. It was pleaded on his behalf that he had acted in ignorance, as evidenced by his publicly showing the foals. He was, so the report has it, "discharged on payment of costs." The heading to the report seems therefore to be quite inappropriate "Docked Horses tails case fails."

The Act by s. 1 prohibits as from January 1, 1950, the docking (the deliberate removal of any bone from a horse's tail) or the

nicking (the deliberate severing of any tendon or muscle in a horse's tail) of horses in England and Wales or in Scotland unless the operation is performed on the certificate of a member of the Royal College of Veterinary Surgeons as being necessary for the health of the horse because of disease or injury to the tail. The performing of such an operation in contravention of the section renders the offender liable to a maximum fine of £25 or to three months' imprisonment or to both fine and imprisonment.

By s. 2, *which does not come into force until January* 1, 1955, docked horses must not be landed in this country from a ship or aircraft without the permission of an officer of Customs and Excise or a licence from the Minister of Agriculture and Fisheries (in Scotland, the Secretary of State). Conditions are laid down to regulate the granting of permission or of licences. A penalty similar to that in s. 1 is imposed for landing, causing or permitting a horse to be landed in contravention of s. 2 or for making false statements to obtain Customs' permission to land. This is made a Customs' penalty. The making of a false statement to procure a licence can be similarly punished, but this is not a Customs' penalty.

It seems strange that the offender in the case referred to should have been unaware of the provisions of s. 1. He is described in the report as a well-known exhibitor of heavy horses and winner of cups and purses at all leading shows in England and Wales. One would have expected the new Act to have been a topic of conversation amongst "horsey" people and to have been given publicity in journals and periodicals dealing particularly with affairs and events connected with horses. That he had remained ignorant of a new provision which directly affected him in matters of his everyday concerns shows that courts should not always reject out of hand pleas of this kind which may offer no defence but may provide some mitigation, even though the claim to ignorance may appear far-fetched.

Probationers and Mental Treatment

The question was recently asked by a justice: "What kinds of treatment may a probationer, dealt with under s. 4 of the Criminal Justice Act, 1948, refuse to undergo?"

The answer is, in our opinion, that he may be justified, in the circumstances of his case, in refusing to submit to any kind of treatment to which he may reasonably object.

By s. 4 (2) of the Criminal Justice Act, 1948, it is provided that the court shall in its order specify the kind of treatment to be given, but only in relation to the place or type of institution where, or the practitioner by whom the treatment is to be given. Beyond this the nature of the treatment must not be prescribed by the court, and it is obvious that it would generally be undesirable.

The probationer, having consented to a requirement as to mental treatment, may subsequently, during the course of such treatment, object to some treatment which is proposed. His refusal may result in his appearance before the court under s. 6 for failure to comply with a requirement in the order. By s. 6 (6) it is provided that refusal to undergo any surgical, electrical or other treatment shall not be treated as a failure to comply with the requirement if the court is of opinion that the refusal is reasonable. Surgical and electrical treatment are no doubt mentioned because they are the forms of treatment most likely to raise objections, and we do not think they limit the generality of the words "or other treatment." It is thus left to the court to decide on the facts of each case whether a refusal is reasonable or not, and it is not possible to say that a probationer may always be entitled to refuse to undergo one particular form of treatment, or that he is never entitled to refuse to undergo some other.

In practice, it is unlikely that many questions of this kind will arise. Medical practitioners, as well as probation officers, will wish to work upon a willing and co-operative probationer.

Mothers at Work

The fact that many mothers of young children go out to work is often quoted as one of the contributory causes of juvenile crime, and there can be little doubt that it has some effect. The matter was raised at the recent annual meeting of the Magistrates' Association, and there was an evident divergence of opinion as to the extent to which juvenile delinquency was affected, and as to the attitude which magistrates should adopt. Some speakers emphasized the value of the women's contribution to the national effort towards economic recovery, while others felt that the danger that children would be left to run wild and get into trouble was so great that only those mothers who were obliged to earn money should go into employment that would keep them from home when their children were not at school. It was said that many young mothers with husbands earning good wages went into factories, not because they needed money but because they wanted still more for themselves.

It was left to Lady Cynthia Colville, an experienced chairman of juvenile courts in London, to get below the surface and look at an aspect of the question that is too often overlooked. She paid tribute to the useful work done by many mothers who managed to have their children well fed and clothed and ready for school every day, and did their best to see that the needs of their children were not neglected. But, she said, there was something more that young children needed. If a child, not really ill, but not very well, had a mother at home, she could deal with him in that leisurely way which creates a comfortable atmosphere in the home. She would have time to give the child breakfast in bed, and see how he was a little later in the day. This was not possible in the case of a mother who had to hurry off to work in the morning, and as a result the children missed something.

Lady Cynthia added that she herself now led a life of tearing about from one thing to another, but, she said, when her own children were young she contrived to be at home whenever they might need her. She expressed her admiration for many of the working mothers, but asked that this other point of view should not be disregarded.

Home may be the right place for a mother, but she cannot always be there. Nevertheless, we shall do well to remember that even nursery schools, school meals, free milk and the other undoubted advantages of the present system, cannot always meet the needs of a child, and that the intangibles are sometimes more important than the material things.

Speeding: An Unusual Defence

According to a newspaper report, an unusual defence was recently raised by a defendant summoned for exceeding the speed limit of thirty miles per hour in a built up area, namely, that at one point along the road over which the defendant had been followed by the police car the distance between the two lamp posts was over two hundred yards. It will be recalled that for the purpose of the Road Traffic Act, 1934, a length of road is deemed to be a road in a built up area "if a system of street lighting furnished by means of lamps placed not more than two hundred yards apart is provided thereon . . ." It appears that on the road in question the lamps were generally less than two hundred yards apart, but that a lamp standard

had been destroyed during the war by enemy action and had not been replaced so that at this one point there was a gap between adjacent posts of more than two hundred yards. The court accepted the submission made on behalf of the defendant that accordingly the road could not be considered to be in a built-up area and thereupon dismissed the information.

It is unfortunately by no means uncommon for lamp standards to be knocked down by vehicles—which may well lead to there being a gap of over the prescribed distance between adjacent posts—and it might at first seem that in view of the above argument, the result of such an accident would be immediately to remove the road in question from the category of a road in a built-up area. In such circumstances, however, we think that it would be possible to argue that there was still a " system " of street lighting in force sufficient to bring the road within the scope of the Road Traffic Act. In the case which gave rise to this note the court may well have felt that the lapse of time between the date when the standard was destroyed and the date of the alleged offence showed that the local authority had ceased to provide a system of lighting complying with the Act.

The Magisterial Officer

We have been interested to receive every quarter a copy of *The Magisterial Officer*, which is the journal of the National Association of Justices' Clerks' Assistants. The current number shows how well conducted is this small periodical, for it contains not only items of news, but also some thoroughly practical articles dealing with some of the problems that arise in the office of the justices' clerk. It is true that the clerk may have to decide what advice must be given to the justices about the issue of process and similar matters as well as about their work in court, but the assistant to the clerk must be competent to place facts and suggestions before the clerk and sometimes to deputize for him. As we all know, many of the most efficient assistants have become clerks to justices.

Among the useful articles in the current issue of *The Magisterial Officer* is one on Indictment By Election. This, after dealing with the matter generally, poses the difficult question of how to proceed when the defendant has a right to trial by jury if he has been previously convicted, but not otherwise. Another article discusses the various practices adopted by different courts as to the suspension, upon terms, of warrants of commitment for maintenance arrears. There is considerable difference of opinion as to the correct way of dealing with sums paid after the court has issued and suspended a warrant, and many difficulties are apt to arise. For our part, we think the practice of some courts of adjourning such cases on terms is preferable. If the defendant keeps his promise, well and good, if not, the court can issue its warrant and cause it to be executed at once. Then these problems do not arise, because the defendant can be committed in respect of the arrears due to date, a fresh summons being issued if necessary.

The Police College Magazine

The fourth half-yearly magazine of the Police College at Ryton-on-Dunsmore has recently made its appearance. In a foreword Lieut.-Col. Sir Frank Brook, D.S.O., M.C., one of H.M. Inspectors of Constabulary, writes of something we all know well, but unfortunately, seldom stay to consider. He says: "Formerly, the opportunity to acquire knowledge was considered to be a privilege, but now, such means as the College provides are taken for granted, and often as a right. I suggest to all the many hundreds who have passed through the College, and to the untold thousands who will become students there, that you regard it as a great privilege."

Brigadier P. D. W. Dunne, C.B.E., D.S.O., M.C., the Commandant, reports that progress at the Police College has been maintained and there has also been steady development in instruction given to Colonial students. The improvement has not been as great as could be wished, but the authorities look forward to the appointment of a Director of Colonial Police Studies in due course.

Apart from the matter normally dealt with in collegiate publications the magazine contains some informative articles, two of which readily caught our attention: "British Justice in India" by Sir Leonard Stone, O.B.E., K.C., former Chief Justice of Bombay, and "Through Italian Eyes" by Dr. F. J. O. Coddington, Stipendiary Magistrate for the City of Bradford. The contributions by students reflect credit both upon them and the directional staff.

The college librarian has written a thesis on "Truncheons and Tipstaves." He traces the origin of these defensive police weapons through a couple of centuries and the text is admirably illustrated with photographs. He quotes an authority who, when asked, "Why collect truncheons?" pithily rejoined, "Why collect at all?" Few would imagine that so much colourful police history is absorbed in the subject.

During the past six months many official overseas visitors have called at the College from widely separated parts of the world. This indicates the extensive and increasing sphere of influence which the centre exercises.

Consumers' Councils

The Northern Gas Consultative Council has recently asked local authorities and other bodies to support them by passing a resolution in the following terms:

"That this council/organization is of the opinion that the heavy purchase tax imposed upon the purchase price of gas-operated water heaters is retarding the adequate supply of hot water in dwelling-houses where no piped supply is available, and the council/organization therefore requests that the question of its removal be taken up with the appropriate government department."

Whilst consultative councils cannot very well be stopped from passing resolutions on any matter they please, the above, so indirectly connected with the supply of gas, etc., is a confusing item of business. The statutory functions of gas councils include the consideration of any matter affecting the supply of gas in their area, including variation of tariffs, or provision of new and improved services, which are represented to them by consumers, or which they themselves consider necessary, and under this the above resolution was presumably passed. Leaving apart for the moment the most important consideration, that many of the boards are unable to maintain adequate pressure in cold weather when gas is most needed, the consultative council might as well move for a reduction in income tax, so that consumers may have more money to spend on the gas heating of their homes. Perhaps from experience it is only fair to add, even sadly, that the average local authority will easily rise to the bait.

Local People and National Transport

Three members of the Commons' House of Parliament quoted the same extract from the 1949 annual report, para. 9, of the British Transport Commission, when referring to matters of some interest to local authorities during the recent debate on the report. In each case, interest turned more or less on consultative committees provided for in the Transport Act,

1947, s. 6, to consist of members appointed after consultation with bodies representative of, among others, local authorities. Councils of counties and county boroughs, plus the City of London, are, by definition in the Act of 1947, s. 125, the "local authorities" for this purpose, which would be extended to include councils of county districts if the member for Reigate was successful in his contention that the latter bodies should have the right and duty imposed on them to make direct representations to a consultative committee; county councils, too, would be better represented under the member's suggestion of direct (*i.e.*, individual) representation, presumably in substitution for that obtained, in practice, through an association.

The extract quoted runs " . . . the fact that the number of matters referred to these (consultative) committees has not been large is an indication that the (railway, road passenger and other) executives are maintaining direct and satisfactory contact with customers and traders throughout the country." This was regarded by the member for Monmouth as a poor argument "about how well the Commission are doing" because, apart from London, consultative committees are non-existent in England. Their non-existence had been indicated by the Minister of Transport during his introduction of the Commission's report, when he mentioned an alteration of intention with respect to consultative committees.

Apparently, the original intention was that those committees should be complementary to area road passenger schemes, which were not, however, proceeding as rapidly as had been hoped they would when the Transport Act came into operation. A review has included examination of the six railway regions and the road haulage areas of eight regions to see whether they offered suitable areas for consultative committees, but the eventual conclusion was that "in this interim period the better alternative arrangement would be to take the eleven areas representing the licensing authorities of public and commercial vehicles." The Minister added that he is "in the process of bringing about the formation and the appointment of those consultative committees."

If local authorities generally and others are active in and about the committees these will not necessarily be the "forlorn hope" visualized by the member for Altrincham and Sale when he was drawing attention to antipathies of north-eastern local authorities to the road passenger scheme for that area. There is still time and opportunity for local authorities, who are engaged in local government in daily contact in districts of counties, as well as in county boroughs, with the people for whose benefit the nationalized undertakings have ostensibly been set up, to be given a warmer hand along the administrative path than a cold shoulder over its edge. Co-operation with and by local authorities at "consumer level" would be one way of meeting the remoteness of transport bodies which was the subject of some constructive suggestions by the member for Coventry, South.

SUMMARY HEARING IN DEFENDANT'S ABSENCE

By F. G. HAILS

There can be no doubt that a magistrates' court, in the exercise of its summary jurisdiction, may hear a case in the absence of a defendant, and indeed a very large proportion of cases are dealt with in this manner. The procedure is laid down by the various statutes dealing with summary jurisdiction, and there are certain interesting technicalities with which this article will deal; in order to keep within reasonable bounds of space only offences will be considered, and the question of juveniles will be left unanswered. In the main the principles are the same, although emergency legislation, and the Acts regulating the enforcement of some orders, introduce other requirements. There are also considerations apart from the technical; most courts have a line beyond which they will not go, so that whilst they may deal with a summons for exceeding the speed limit in the absence of the defendant, they may insist on his presence when he is accused of driving without due care and attention. As to where this line should be drawn, and as to matters which could be considered in drawing it, we will be silent.

The power to hear summary cases in the absence of the defendant is conferred by the Summary Jurisdiction Act, 1848, s. 13, which provides that, having been satisfied that the summons has been duly served, the court may "proceed to hear and determine the case in the absence of" the defendant, or may adjourn the case for his attendance, which may be enforced by warrant. It has been held that where the defendant does not appear in person, but does so by an advocate, a warrant should not be issued: *Bessell* v. *Wilson* (1853) 17 J.P. 567.

As we have said, we are confining this article to the consideration of summary offences, and the first point to be decided is how far does this phrase extend.

It is perhaps easiest to say at the start that it does not include indictable offences triable summarily under the provisions of the Criminal Justice Act, 1925, s. 24. Before such cases can be heard summarily, the consent of the accused is necessary, and it is the universal practice to ask for that consent to be given personally. Moreover, a court has various duties before assuming summary jurisdiction in this class of case, and amongst them is one to have regard to any representation "made by the prosecutor in the presence of the accused" (Criminal Justice Act, 1925, s. 24 (1)). Clearly, therefore, his presence is necessary at the outset, and without going any further into the matter difficulties may arise if he is then allowed to depart. There is an exception for corporations: if these bodies do not appear either by authorized representative or by counsel or solicitor, the case may be heard summarily (Criminal Justice Act, 1925, s. 24 (1), *supra*). If, however, they do so appear, then consent is necessary.

The next class of case is that which is triable either summarily or on indictment under the terms of the statute creating the offence, the procedure being now regulated by the Criminal Justice Act, 1948, s. 28. It was held in *Hastings and Folkestone Glassworks, Ltd.* v. *Kalson* [1948] 2 All E.R. 1018, that these offences are, for certain purposes, "indictable" whether they are in fact dealt with on indictment or summarily, but s. 28 provides for two main ways of dealing with these cases, and there is a substantial difference between the courses. The first method is that the prosecution makes representations at the outset of the case: the bench may then decide to hear it summarily, and it is in all respects treated as a summary case, in that there is no right to commit for sentence under the Criminal Justice Act, 1948, s. 29, and the Costs in Criminal Cases Act, 1908, s. 1, does not apply. It is noteworthy that s. 28 (1) does not say that the presence of the defendant is necessary when the prosecution is applying for summary hearing. Under s. 28 (2), however, the case proceeds as if it were indictable until representations are made by either side and the court decides on summary hearing. If this course is adopted, then the case still

retains the characteristics of an indictable offence in that there may be a committal for sentence, and the Costs in Criminal Cases Act, *supra*, applies : this also follows if the court refuses to hear a case summarily where application is made under s. 28 (1). Now, if the case is heard as an indictable offence, the presence of the accused is necessary during the taking of depositions (Indictable Offences Act, 1848, s. 17). The Act of 1948 seems to contemplate, however, that a decision under s. 28 (1) is to render the case in all respects save one as on all fours with any other summary case, and so to give the court power to hear it in the absence of the defendant : the exception is, of course, that under s. 28 (6) the court may at any time up to the close of the case for the prosecution discontinue the summary hearing and proceed as for an indictable offence : if this course were to be adopted in the case of an absent defendant then it would be necessary at once to adjourn for his attendance during the taking of depositions.

The next class of offence is that which, by the Summary Jurisdiction Act, 1879, s. 17, is triable on indictment at the option of the defendant because the penalty on summary conviction is more than three months. It must not be forgotten that certain offences triable summarily or on indictment as mentioned in the preceding paragraph may also be subject to this right. Prior to the coming into force of the Criminal Justice Act, 1948, his attendance was generally considered necessary so that he might make his election, but that Act amended the earlier statute so that if he does not appear his consent to summary trial is assumed. A similar assumption has always applied in the case of corporations, which could not appear in person.

Finally, there is the summary case pure and simple, and so to sum up it would seem that the following classes of case can be heard summarily in the absence of the accused :

(*a*) Cases heard summarily under the procedure laid down by the Criminal Justice Act, 1948, s. 28 (1).
(*b*) Cases where the defendant may opt for trial under the Summary Jurisdiction Act, 1879, s. 17.
(*c*) Summary cases.

The next point is that the court must be satisfied as to service, and this falls into two divisions, first, has the summons been served, and secondly, has the service been proved.

The Summary Jurisdiction Act, 1848, s. 1, calls for service by a " constable or other peace officer, or other person to whom the summons shall have been delivered . . . by delivering the same to the party personally or by leaving the same with some person for him at his last or most usual place of abode." Service on limited companies must be in accordance with the Companies Act, 1948, that is to say, the summons must be left at the registered office. The Service of Process (Justices) Act, 1933, s. 1, modifies this by allowing service to be effected by prepaid registered post addressed to the defendant at his last or usual place of abode. The service is deemed effective if the defendant appears in person or by advocate, or if the fact that the summons has come to his knowledge is proved : the production of a letter or other communication, purporting to be written by or on behalf of the defendant in such terms as to justify the inference that the summons came to his knowledge is *prima facie* proof of this fact. This Act applies only to English summonses for service in England ; witness summons and maintenance summons against members of the Services are excepted. The original methods of service are still in force, and where a summons is served by post the date of service is the date on which it would have been delivered to the defendant in ordinary course of post. The question of time is important, for it has been held that it should be served a reasonable time before the hearing, of which time the justices are the judge. It is suggested by the writer that four days might usually be regarded as a minimum unless the defendant has been served personally, and lives within a short distance of the court. There are also special requirements relating to the service of various summonses, and as we are dealing with offences attention will be drawn to the Friendly Societies Act, 1896, and the Food and Drugs Act, 1938, to which reference should be made on the question of service if the defendant does not appear when summoned for offences under either of these Acts.

The method of proof has been necessarily referred to in connexion with service by post : originally the Summary Jurisdiction Act, 1848, s. 1, called for the attendance and evidence on oath of the person who had effected the service, but this has been modified by the Service of Process (Justices) Act, *supra*, s. 2, which allows proof of service by delivery by hand, or by post, to be given in the form of a certificate prescribed by rules made under the Act : the form is to be found in the Summary Jurisdiction Rules, 1915, No. 56 (*a*). Proof may also be given by solemn declaration under the Summary Jurisdiction Act, 1879, s. 41, but this is uncommon today. Ordinarily, therefore, the steps of proof of service will be as follows :

(*a*) Proof of service personally or by leaving at last known or usual place of abode on oath or by the production to the justices of a certificate in the prescribed form ; or
(*b*) proof of posting by prepaid letter post addressed to defendant at last known or usual place of abode on oath or by the production to the justices of a certificate in the prescribed form, with a letter of acknowledgment from defendant or on his behalf.

When these formalities have been complied with, the bench may, if it wishes, hear the summary case against the defendant in his absence.

As has been pointed out, the power is to hear and determine the case, and this phrase can only mean to hear the evidence tendered by the prosecution. It cannot mean that the court can take any cognizance of a letter addressed by the defendant, or anybody on his behalf, to the justices, to their clerk, or to the police, unless proof is forthcoming of the defendant's handwriting. This procedure is widespread, but the writer has no hesitation in saying that it is completely wrong, and that were any " conviction " made on the strength of a purported plea in an unproved letter to be challenged it would be upset. There does not appear to be any reported case on this subject, but it is in the writer's experience that a man who had written such a letter to his court subsequently appealed to quarter sessions against conviction and sentence. The fact that a letter had been written was disclosed to the higher court, and the notes of the case showed clearly that the evidence had been heard and the case decided on this, and not on the letter, but that this had been read to the court after conviction. The letter was not treated by the Appeal Committee as a plea of guilty, which would have debarred the appeal against conviction being heard. It is noteworthy that the Service of Process (Justices) Act, *supra*, s. 1 (1), makes a letter from a defendant " in such terms as reasonably to justify the inference that the summons came to the knowledge of the defendant " *prima facie* evidence not of service, but merely of the fact that the summons came to his knowledge, one link in the chain necessary to prove service. In view of the fact that legislation was necessary to make this guarded admission, there can be no justification at all for accepting a letter purporting to contain a plea of guilty as an abrogation of the statutory duty of the court to hear the evidence, and to find the case proved, or not proved, as the case might be.

The letter may possibly be read after the finding, or it may be read as an acknowledgment of the summons before the hearing, but in such case it is the duty of the bench to disregard it except for this purpose.

WHAT'S ALL THIS ABOUT DUSTBINS?

By W. E. LISLE BENTHAM, *Deputy Town Clerk, Metropolitan Borough of Lewisham*

One would hardly have expected that such an innocent article as a dustbin would have caused such a stir in legal and other circles as it seems to have done ever since the decision in *Croydon Corporation* v. *Thomas* [1947] 1 All E.R. 239; 111 J.P. 157.

Some of the problems to which it has given rise have already been discussed in 113 J.P.N. at p. 219 and 114 J.P.N. at p. 203 and, not unnaturally, there has been some clamour for clarification of the law by amendment. It is the purpose of this article, however, to consider how and why such problems have arisen and to point to the means whereby it is suggested that they may be avoided within the framework of existing legislation.

The dustbin has for the most part long ago succeeded the old-fashioned insanitary ashpit which usually was built into or formed part of the structure of houses and which was cleared only at infrequent intervals and whose contents accordingly became anything but salubrious. As the means of the collection and removal of refuse, the dustbin appears to have first received official recognition in s. 11 of the Public Health Acts Amendment Act, 1890, which enacted that the expression "ashpit" should include "any ashtub or other receptacle for the deposit of ashes, faecal matter, or refuse." In s. 75 of the Public Health Act, 1936, we find the term "dustbin" used in its own right and in s. 343 defined as "a movable receptacle for the deposit of ashes or refuse," although in the Public Health (London) Act, 1936, it still retains the old name of "ashpit" (*see* ss. 105 and 304), which indicates that at that date the Metropolis was still behind the provinces in getting rid of such ancient structures.

Now, the essence of a dustbin is that it should be movable as distinct from the former immobile receptacle for refuse and it is this distinction which is really at the root of the present controversy as to whether the landlord or the tenant should pay for its replacement. So long as it remained a structural accessory and in the absence of agreement to the contrary, it was generally accepted as the responsibility of the owner or landlord; indeed, as indicated in *Lumley's* notes to s. 75 of the 1936 Act, under the previous general law a local authority by virtue of ss. 35 and 36 of the 1875 Act could require a house to be provided with an ashpit and, by byelaw under s. 157 of that Act, could control the manner of its construction and its position. Moreover, the byelaw could be made wide enough to require that every new ashpit provided should consist of one or more movable receptacles. Since a dustbin, as distinct from an ashpit (in the original meaning of that word), has a separate entity, and is moreover the more liable to destruction, it is perhaps surprising that the question of liability for replacement has not arisen before. No doubt this is due to the fact that owners have now become alive to the fact that the cost of dustbins has risen sharply since the war, whilst rents from controlled properties have remained more or less stationary.

Accordingly, ever since the Croydon decision, local authorities in administering the provisions of s. 75 of the 1936 Act and s. 105 of the 1936 (London) Act, have found themselves in some dilemma as to the exercise of what has been held to be a judicial discretion in deciding whether the notice requiring the provision of dustbins should be served upon the owner or the occupier of the premises.

So far, in none of the decided cases has any guiding principle been established which would assist local authorities in making what is obviously a difficult decision. In *First National Housing Trust Ltd.* v. *Chesterfield Rural District Council* [1948] 2 All E.R. 658; 112 J.P. 413, Lord Goddard, C.J., pointed out that, by deciding in favour of the landlords, it was not the fact that the justices had decided that the tenants were to bear the expense and that, if the effect of the decision in any particular case was to put on the tenant a burden, obligation or liability which ought by the terms of the contract to be discharged by the landlord, it might well be that the tenant would have a right of action against the landlord to recover any expense to which he was put. Neither this, nor the *Croydon* case, however, affords any assistance to local authorities faced with the frequent situation in which there is either no tenancy agreement in existence or obtainable or the agreement is silent as to which party is responsible for dustbins, nor as to how they should construe, *e.g.*, a covenant by the tenant to keep in repair all sanitary conveniences and apparatus.

The trend of recent decisions on appeal is clearly against placing the cost on the owner on the ground that a landlord whose rents are frozen and whose expenses are constantly rising is naturally aggrieved by an additional burden being placed upon him.

In the Chesterfield case, Lord Goddard, C.J., remarked: "If this matter had been present to the mind of the draftsman or Parliament, some provision might have been made for all parties to be brought before the court in cases of this description, where a liability might be thrown on one party or the other." Curiously enough, s. 290 of the 1936 Act, which relates to notices requiring the execution of works, but not to notices requiring the provision of dustbins, contains provisions whereby all interested parties can be brought before the court, which then has power to decide upon which party the burden of complying with such notices should fall. This procedure is similar to that contained in s. 83 of the Food and Drugs Act, 1938, whereby the party against whom proceedings are brought can bring in other persons.

Any amendment of existing legislation on these lines would not, however, obviate the necessity for the attendance at court of the interested parties, nor any appeal to a higher court, unless the right of appeal were barred, which seems undesirable, at least in respect of any question of law.

The obvious and most sensible and, it is suggested, also the cheapest and fairest way out of the difficulty to all concerned is for all local authorities, as some of them do, to exercise their existing powers under s. 75 (3) of the 1936 Act and, as regards London, s. 67 of the London County Council (General Powers) Act, 1939, both as extended by the Local Authorities (Charges for Dustbins) Order (S.I. 1949 No. 120) made by the Minister of Health under Defence Regulation 56 (1B).

In this way containers of standard quality and size could be purchased in bulk on competitive tender at minimum cost and, as and when the existing dustbin requires replacement, supplied by the local authority at an annual charge not exceeding five shillings recoverable as part of the general rate in respect of the premises and apportioned in respect of each part of premises which may be separately occupied and this "without prejudice to the rights of any person under any tenancy agreement" to recover the charge from the person liable for the provision of the bin in cases where that person does not happen to be the ratepayer.

There are, however, three methods by which these powers can be exercised, the merits and demerits of which I shall hope to discuss in a future article.

LOCAL AUTHORITIES' LOANS

Applications for loans approved by the Public Works Loan Board during the year 1949-50 were considerably more numerous and greater in amount than in 1948-49, both features being partly due, no doubt, to two factors also contributing to increases in the number and amount of advances from the Local Loans Fund. Those two factors were maintenance of the Board's rates of interest below market level and shrinkage of capital funds accumulated by local authorities during the war years. A third factor tending to increase the number and amount of applications is nearer maturity of projects originated two, three or more years earlier after war-time suspension or to comply with new legislation, *e.g.*, for housing or education. A fourth factor affecting amount is rising prices; the average amount per application may be far from a perfect index but it is noteworthy that between 1948-49 and 1949-50 there was an increase of twenty-three *per cent.*, from £21,343 to £26,179, per application approved.

Nearly all the 15,034 approvals of the Board in 1949-50 to loans for £393½ million were for local authorities, as were the 12,632 approvals in 1948-49 to loans for £269½ million. Items in the £393½ million, and corresponding items in the £269½ million in parenthesis, included education £48 million (£17 million), housing schemes £264¾ million (£190 million), advances under the Small Dwellings Acquisition Acts £6¼ million (£3¼ million), town and country planning schemes £6¼ million (£2¾ million), water supply £12 million (£10½ million) and re-borrowing to repay stock £14¾ million (£1¼ million). The extent to which loans will not be proceeded with will probably be relatively small, the relevant amounts written off the Board's commitments in each of the years 1948-49 and 1949-50 having been in the region of £10 million.

Advances made by the Board to local authorities during 1949-50 were eventually about £52 million in excess of the estimate, instead of the excess being £100 million as appeared probable in December, 1949, when Ministry of Health circular 116/49 made requests, among others, that local authorities should make the fullest possible use of other available resources and limit advances under loan sanctions to amounts immediately necessary. Also, the Board have requisitioned information from local authorities, in order to assess the immediacy of need for recourse to the Board's resources and check a tendency to anticipate capital needs in case sub-market rates of interest were raised. In the result, the 13,676 advances from the Local Loans Fund during 1949-50 totalled £292½, compared with £252¾ million in respect of 13,335 advances during 1948-49.

An apparent view of the Board that a local authority should always utilize such superannuation fund moneys as may be available to minimize advances from the Local Loans Fund may raise questions. That view appears to be implicit in the Board's statement, when discussing increased demands on them during the summer of 1949, that "there seemed also to be some diversion of current superannuation and other local authority funds from internal to external investment in consequence of the higher yields which became obtainable on gilt-edged stocks." Doubtless, such diversion occurred and would ordinarily continue while there was and is a difference of 10*s. per cent.* or more between interest rates payable to the Board and those receivable from gilt-edged stocks.

If a local authority comply with the view of the Board and do not follow the direction in the Local Government Superannuation Act, 1937, s. 21 (3), to "invest the moneys in securities in which trustees are authorized to invest," but exercise the alternative permissive power similarly derived to "use the moneys for any purpose for which they have a statutory borrowing power," questions arise with regard to the appropriate rate of interest payable to the superannuation fund pursuant to the condition laid down in para. (*a*) of s. 21 (3). That condition requires interest to be "at such rate *per cent.* per annum as may be determined by the administering authority to be equal, as nearly as may be, to the rate of interest which would be payable on a loan raised on mortgage under the statutory borrowing power."

On a narrow view, since internal use in the particular circumstances would be in substitution for borrowing on mortgage from the Public Works Loan Board, the Board's chargeable rate of interest would be the proper rate to be "determined." On a wider view, taking account of the 1937 background (which, in dealings with trust moneys, ought not to be allowed to fall away under the impact of later levity of the State in the invasion of established practices), one intention of s. 21 is that a superannuation fund shall never be deprived of the benefit of interest nearabouts equal to the best market rate obtainable from certain types of securities. Departure from that principle would be of no practical importance if the incidence of loss from its infringement fell in the same sphere and manner as a countervailing gain from the sub-market interest rate of the Loan Board. An instance of differing incidence relates to the possibility of larger "deficiency" contributions being required from admitted or participating authorities to cover interest lost by a superannuation fund through internal use of moneys by an administering authority at Loans Board instead of market rates of interest. Two alternatives are for an administering authority to charge market rate to a fund borrowing from the superannuation fund, as it plainly would have to do apart from sub-market facilities available from the Loans Board, or for the Board to accept the view that their conditions of lending should not fetter the discretion of a local authority with regard to the investment of moneys belonging to a fund legally distinct from any which has borrowed or may be seeking to borrow from the Board.

More frequent resort by local authorities to the Public Works Loan Board instead of other sources is evidenced in the Board's recent report, partly due, no doubt, to further exhaustion of the war-time accumulation of internal resources which the Board stated in their 1948-49 report had been used to finance post-war capital expenditure. Using the latest available summary of local government financial statistics, the Board observe that during 1947-48 loans raised from them amounted to £214 million, equal to eighty *per cent.* of total loans raised amounting to £267 million, compared with £95 million, or sixty-four *per cent.*, raised from them out of a total of £150 million in 1946-47. No clue is given by the Board to a possible extension by Parliament of the period ending on December 31, 1950, during which local authorities are prohibited, except with Treasury approval, under the Local Authorities Loans Act, 1945, s. 1, from borrowing otherwise than from the Public Works Loan Commissioners.

Procedure previously outlined by the Board for dealing with cases where high rates are being levied by the local authority, or other adverse factors, made security doubtful has been continued. Interpretation of "high rates," whether by reference to poundage, amount per head of population or some method of assessing existing or prospective local financial resources, would be nearly as interesting as that of "other adverse factors." In short, the procedure is submission of the facts and the Board's

views to the Treasury followed by consultation of the latter with the department responsible for approving a project. The only refusal of a loan was to a small parish council seeking to raise a loan, large in relation to limited rating powers, for the purpose of laying out a recreation ground.

One "adverse factor" seems to be defined during reference to borrowings for "certain school building projects" which "gave the Board some concern." When carrying out their duties laid upon them by the Public Works Loans Act, 1875, and to see that their loans are sufficiently secured, the Board cannot, they state, "avoid taking account of the possibility that a proposal of a borrower to incur further heavy indebtedness may prejudice the security upon which they are asked to lend and upon which they may already have lent large sums of money." This, they continue, is, of course, especially the case if the scale on which it is proposed to incur such indebtedness is considerably in excess of that contemplated by other local authorities in similar circumstances or local authorities in general. High costs of some educational building projects in comparison with others led the Board to communicate with the Treasury, and ultimate agreement of the Board to make the loans required was reached "with some reluctance."

WE CAN NO LONGER AFFORD INTERNATIONALISM IN OUR SCHOOLS

By JOHN AUDRIC

The spirit of nationalism in all countries is more intense and more active today than at any other period in the past sixty years. It is officially encouraged in the schools where the fires of patriotism are kindled at an early age. In England, we have for years followed a policy of internationalism, but the time has come when we should look with critical eyes at the teaching and text-books of these countries, and consider carefully whether or not a nationalist bias in our own schools would now be wise and even beneficial to the country and to the world.

For there is no national so ready to acknowledge the good points of other nations as the Englishman. I have attended conferences and have watched the amazement dawn on the faces of Frenchmen, Norwegians, Danes and Belgians, when during a talk, an Englishman or woman has drawn attention to some national custom or institution which he has admired so much. Their astonishment showed only too clearly that they did not realize that they possessed all these virtues, and they did not by any means share his admiration for some of their institutions. Rather one had the impression that they would not altogether object to losing some of them.

English people travel abroad far more than do the peoples of other countries. They have an extraordinary confidence in their own popularity, and an even greater belief in their powers as peacemakers. Our schoolchildren travel in thousands all over the Continent. They are led by teachers who are so sure of the appeal their young charges will have that they proudly label them with the noble, ambitious, but monotonous and unoriginal title "Ambassadors of Friendship!"

Now the good intentions and devoted care of these teachers must be acknowledged. They have probably spent much time in planning the tour, studying the manners and customs, and history of the people among whom they will be living for two weeks or even more. It is customary for the school to produce a guide book, and as friends and relatives of the fortunate children who are participating in the tour read these books, we can assume, that in all, hundreds and thousands of men and women, youths and children indirectly receive some knowledge of other countries.

And so we do our full share of internationalist teaching. We not only tolerate, but we pay to see films where our part in building up the civilization of the world or defending it is belittled or scorned. What of the film "A matter of life and death" or the one where Errol Flynn captures Burma? In the last month I saw a film which the American producer introduced as a tribute to the American infantryman. He told the audience that if you asked an Englishman what was the outstanding battle of the war from their point of view, he would probably reply El Alamein, but if you asked an American, he would say—then he read out a score of battles! We cheerfully queue to see these films. Yet no foreign film studio would produce a film with an unpatriotic trend. The Jews left us in no doubt as to their feelings over "Oliver Twist!"

In our schools there is abundant evidence of the acknowledgment we give to the writers, musicians and thinkers of other countries. You will find their pictures, portraits or busts in many rooms. For example, in most music rooms you will see busts of the German composers, in the science room prints of the world's scientists. In a Norwegian school I watched a class reading from Dickens. I asked the pupils if they knew what he looked like. Not one had seen his picture. Yet on the walls, beneath the inscription in huge letters "God protect Norway," were plenty of pictures of Ibsen and Grieg.

Hitler sent his young members of the Hitlerjugend and the Bund Deutscher Mädels all over this country. Our young people became infected with their deep belief in their country, but we were too reticent or modest to tell them of the glory of our own. We had to prove to them by death and destruction that we loved it.

Quite recently I listened to two German youths giving a talk to one of our youth clubs. They were telling them of the destruction of Berlin. Our youths were looking uncomfortable, even guilty. I asked how the devastation compared with Amsterdam, Warsaw or Prague. I asked whether they had heard of Lidice or Oradour sur Glane.

For a brief moment a look of hate leapt to the eyes of these young Germans. It reminded me of a lonely road in Brittany not long after the end of the war when some German prisoners had stared at the small party of schoolchildren I had with me at the time. "Englander!" they hissed, hatred blazing from cold blue eyes, "You stopped us in 1914, again in 1939, but the next time we are coming for you—first!"

These two Germans quickly recovered themselves. "That was the Nazis!" they ventured. I was glad to see that their young audience looked less guilty when I left them.

We do not want to return to the former jingoistic teaching in our schools, but the story of this country should now be told. And there must be no omission on the grounds of nationalism. We stood alone in 1940, and against tremendous odds. We saved the world. The sacrifice was great. Should we not

tell this story to our children? For it will stir their blood. And they will be proud of the heritage for which their parents and relations died.

In too many places the tremendous part we played in the liberation of the world is being scaled down. We are doing nothing about it. We fondly imagine that the world knows of the part we played. It does not. Historians and teachers in other countries are too busy telling and writing of the part their nationals played.

It is just so much nonsense to say that patriotism or nationalism causes war. The French are patriotic and nationalist. But they have had to defend themselves three times in seventy years because on their common frontier stand over seventy million people all proud to be called Germans. It might be said, with truth, that it is because of their patriotism and their nationalism that they have so often recovered after crushing defeats, and have a resilience which is the envy of the world.

I have read the history books in use in schools in Great Britain, and I have also read those in use in most countries in Europe. There, the nationalist bias is more pronounced, and colours all events, while over here there is, and always has been, some attempt at presenting an impartial account.

I do not think that the teaching in our schools has ever had a trend towards communism. The beliefs of schoolchildren are generally fashioned by the parents. The average child has a natural inclination to believe that his country is the best, but it is true that this proud belief has not always been fostered. For this, schoolteachers are not always to blame. In the past, they have been urged, in official quarters, to stress the good qualities of other peoples, to soft pedal on patriotism. Even patriotic verse has been decried.

Right up to the outbreak of the last war, speakers from the League of Nations received official permission to visit schools, and give talks and lectures. And those of us who had returned from visiting Germany in the spring of 1939 wanted to lift the heads of these misguided speakers far out of the sands!

Only last year, at the annual conference of the National Union of Teachers, Dr. Torres Bodet, Director General of Unesco, appealed to his audience of teachers to give children the chance of learning about other countries. He condemned the narrow, nationalist teaching in schools, and maintained that the aim of history should be to break down nationalism.

This was excellent advice, but only if followed by teachers in every country. For our part, we have gone a long way towards trying to understand the viewpoints of other nationals, and it is time to expect that they in turn recognize that we have a viewpoint, and that this too, should be understood.

WEEKLY NOTES OF CASES

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Morris and McNair, JJ.)

R. *v.* MORRIS

October 23, 1950

Criminal Law—Sentence—Common law misdemeanour—No limit of two years' imprisonment.

APPEAL against sentence.

The appellant pleaded Guilty at Sussex Assizes before Hallett, J., to conspiring with other persons to evade customs duties on foreign-manufactured watches, and was sentenced to four years' imprisonment. It was contended on his behalf that, the offence being a common law misdemeanour, the maximum punishment was two years' imprisonment.

Held, that the amount of a fine or the length of imprisonment for a common law misdemeanour had always been in the discretion of the court, and that, with the disappearance of the reasons which had led courts to confine sentence in such cases to two years' imprisonment because of the severity which a longer term of that form of punishment would involve, a court could now impose imprisonment for any term at its discretion, provided that the sentence was not inordinate, and that in the present case the sentence was lawful and well deserved. The appeal, therefore, must be dismissed.

Counsel: *Dutton Briant* for the appellant; *Malcolm Morris* for the Crown.

Solicitors: *J. E. Dell & Loader*, Brighton; *Solicitor for Customs and Excise*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Byrne and McNair, JJ.)

October 16, 1950

R. *v.* WALKER

Criminal Law—Committal for trial—Alleged invalidity—Taking of depositions—Leading questions asked—Indictable Offences Act, 1848 (11 and 12 Vict., c. 42), s. 17.

APPEAL against conviction.

The appellant was convicted at Bolton borough quarter sessions of larceny from the person and was sentenced to six years' imprisonment. His only ground of appeal was that there had been an invalid committal for trial because the depositions were taken by means of leading questions based on a statement which he himself had made to the police admitting all the facts.

Held, that, though that method of taking the evidence might be undesirable, the committal was not invalidated thereby, and the appeal must be dismissed.

Counsel: *G. C. H. Spafford* for the appellant; *Glidewell* for the Crown.

Solicitors: *The Registrar, Court of Criminal Appeal*; *Edgar Fielding*, Bolton.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* ZIELINSKI

Criminal Law—Evidence—Admissibility—Time for deciding issue—Summing-up—Corroboration—No necessity for judge to refer to evidence relied on.

APPEAL against conviction.

The appellant was convicted at Yorkshire (West Riding) quarter sessions of indecent assault on an elderly woman. The allegation of the prosecution was that the offence had been committed when the appellant called at her house to sell certain bandages. Counsel for the prosecution informed counsel for the defence that he proposed to refer in his opening speech to the evidence of two other women whom, the prosecution alleged, the appellant had indecently assaulted in similar circumstances and whom the prosecution were proposing to call as witnesses. Before the case began, counsel for the defence asked the chairman to rule on the admissibility of the evidence of these two witnesses. The chairman did so, deciding that their evidence was admissible. Both the witnesses gave evidence, but did not depose to anything prejudicial to the appellant. In his summing-up the chairman told the jury of the desirability of corroboration, warned them of the danger of convicting in the absence of corroboration, and told them what was meant in law by corroboration, but he did not point out to them any piece of evidence which was capable in law of amounting to corroboration.

Held, (i) following *R. v. Cole* (1941) (105 J.P. 279), that the procedure followed with regard to hearing the argument on the admissibility of the evidence before the case was opened was undesirable, and that the proper course in such cases, on the prosecution learning that objection would be made to certain evidence, was that the evidence should not be referred to in opening and that the argument on admissibility should take place at the appropriate moment in the case when the evidence was tendered; (ii) it was not the duty of the judge to point out to the jury pieces of evidence which could amount to corroboration, provided he had explained to the jury what was meant by corroboration.

Counsel: *Purrs* for the appellant; *Stanley-Price* for the Crown.

Solicitors: *Field, Roscoe & Co.*, for *Emmanuel Austin*, Leeds; *R. C. Linney*, Wakefield.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

KING'S BENCH DIVISION

(Before Sellers, J.)

NALDER AND ANOTHER *v.* ILFORD CORPORATION

October, 5, 6, 10, 11, 12, 16, 1950

Building Regulations—"Building"—Breach of byelaws—Notice requiring removal of structures—Requirement to state right to apply for extension of time—Service of notice—"Owner"—Measure of damages for illegal demolition—Public Health Act, 1936 (26 *Geo.* 5, *and* 1 *Edw.* 8, *c.* 49), *s.* 65 (3), *s.* 300 (3), *s.* 343 (1)—*Building Restrictions (War-Time Contraventions) Act*, 1946, 9 *and* 10 *Geo.* 6, *c.* 35), *s.* 1, *s.* 3 (1).

ACTION for damages for trespass. Counterclaim for £40 10*s.* 8*d.*, being the reasonable expenses of demolition and/or removal of buildings not complying with byelaws under the Public Health Act, 1936, s. 65 (3).

The plaintiff, Mr. Nalder, held on long lease from the London County Council three premises in Ilford at rents of £16, £15 and £15 a year respectively which he let under an oral agreement on monthly tenancies at yearly rents of £62 10*s.*, £62 and £62 respectively to the plaintiff company of which he was a director. The rents to the plaintiff company were less than two thirds of the annual value of the premises and not rackrents under the Public Health Act, 1936, s. 343 (1). The plaintiff company erected on the premises five structures of breeze blocks, most of them with a thin cement washing on each side. They comprised: (i) a southerly wall in two parts with a gap in the middle; (ii) southerly, easterly and northern walls; (iii) a southern wall (the northern wall of (ii)), an easterly wall and a northern wall with a covering comprising cross concrete beams carrying tarpaulin sheets; (iv) a southern wall (the northern wall of (iii)), and an easterly wall with an eighteen feet reinforced concrete beam running from wall to wall; and (v) the southern, eastern and northern walls of a garage with a wooden door at the westerly end. Structures (i) and (ii) had no roof, and structures (iii) and (iv) had only the beams and covering referred to, though all the walls were structural walls intended to carry roofs. All four structures were used for industrial purposes to house or repair motor vehicles or to store building or other materials. Structure (v) was used as a garage and later for some manufacturing purposes. On January 17, 1950, the defendant authority served a notice on the plaintiff company alleging that it was erecting a building on one of the premises and had erected buildings on the other two which contravened the byelaws and requiring it to remove the work or to effect alterations necessary to make it comply with the byelaws within twenty-eight days. The plaintiff company took no steps to comply with the notice within twenty-eight days, and, on April 24, 1947, and the succeeding days the local authority entered on the three premises and demolished all the structures, purporting to act under powers conferred on them by the Public Health Act, 1936, s. 65 (3).

The plaintiffs claimed damages on the ground that this action constituted a trespass because (*a*) the notices were served more than twelve months after the completion of the structures, contrary to the provisions of s. 65. It was found as a fact that the notices in the case of structures (i), (ii) and (iii) were served within the twelve months, but in the case of structures (iv) and (v) they were served after the expiration of the twelve months; (*b*) the structures were not buildings within the meaning of the byelaws; (*c*) the notices had been wrongly served on the plaintiff company which was not the owner of the structures within the meaning of s. 343 (1) of the Act of 1936; (*d*) the notices did not state that the plaintiffs had a right of appeal against the authority's decision as required by s. 300 (3) of the Act of 1936 and so were invalid. The defendant authority disputed contentions (*b*), (*c*) and (*d*) and said that so far as the notices given more than twelve months after the completion of the structures were concerned the time was extended by s. 1 of the Building Restrictions (War-Time Contraventions) Act, 1946, and they had duly served notice of their proposal to take steps to enforce the byelaws under s. 3 (1) of the Act of 1946 on the plaintiff company on June 14, 1946, in the following form: "It is also clear that many buildings and erections have been placed on the land at the rear of the above properties [the three premises] which do not comply with the council's byelaws and in many cases without plans having been submitted, and the council will also exercise their statutory powers to secure that these buildings and erections shall be either pulled down, or in proper cases altered so as to comply with the byelaws."

Held, (i) all the five structures were buildings for the purposes of the byelaws.

(ii) as on the basis of the subsisting interests in the premises the company would have received the rackrent of them if they had been let at a rackrent, the company was the owner as defined in the Public Health Act, 1936, s. 343 (1).

Truman, Hanbury, Buxton & Co. v. *Kerslake* (58 J.P. 766; [1894] 2 Q.B. 774), *followed*.

(iii) the plaintiffs' right to apply to a court of summary jurisdiction to extend the time for compliance with the notice under s. 65 (1) was not a right of appeal and so did not require to be stated in the notice under s. 300 (3), and the notice served on the plaintiffs was therefore valid.

(iv) the notice given by the defendant authority under the Building Restrictions (War-Time Contraventions) Act, 1946, s. 3 (1), though informal, was valid, but its service on the plaintiff company was bad, since the plaintiff Nalder, and not the plaintiff company, was the owner required to be served within the meaning of the Housing Act, 1936, s. 188 (1) (as he was entitled to the rents and profits under a lease with more than three years unexpired), and service on the plaintiff company was not service on the plaintiff Nalder, and, therefore, the defendant authority were not liable for damages for trespass in respect of structures (i), (ii) and (iii), but were so liable in respect of structures (iv) and (v).

(v) since the condition of the buildings constituted an infringement of the byelaws and since they were likely to be properly dealt with by the defendant authority within five years, the cost of reinstatement was not the true measure of damages in respect of the demolition. The damages should be based on the technical trespass to the rights of property, taking into account the fact that the plaintiff Nalder and the plaintiff company were flouting the building regulations. The damages awarded were £25.

Counsel: *W. G. Wingate* and *Peter Dow* for the plaintiffs; *Neild, K.C., E. Garth Moore* and *J. R. McGregor* for the defendants.

Solicitors: *Bolton, Johnson & Yate-Lee*; *Town Clerk*, Ilford.

(Reported by F. A. Amies, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

DETENTION OF ADULTS PRIOR TO SENTENCE

The following is a memorandum submitted by the Howard League for Penal Reform to the Social Commission of the Economic and Social Council of the United Nations, in their capacity as a non-governmental organization with consultative status:

In any study of this subject the aim should be to secure international acceptance of a body of general rules for the protection of suspected or accused persons. The safeguards embodied in the draft rules set out below are considered the essential minimum. The concept underlying them all is a respect for the dignity of man, and the principle that a person is innocent until proved otherwise. The condition of fixed maxima times which is included in several points does not imply that they may not vary from country to country.

1. There should be a statutory maximum time within which the detained person must be brought before a tribunal. This should be as short as geographical, climatic and transport conditions allow.

2. There should be a statutory maximum time within which the case must be decided. (This is open to the objection that defendant may wish to prevent a lengthy and elaborate defence. There might, therefore, be a proviso that on the application of the defendant the hearing may be prolonged beyond the statutory limit. The extension itself, however, will have to be subject to a maximum limit, otherwise there may be filibustering.)

3. Immediately after every arrest steps should be taken to see that the detained person's family is informed of the arrest and the place of detention. If necessary, arrangements should be made for children or dependents to be cared for.

4. There should be statutory provision of adequate legal aid for the poor.

5. Bail should be granted in all cases in reasonable sums unless there is a fair risk of the person detained jumping bail, disposing of loot, helping confederates, or otherwise defeating the ends of justice.

6. The places at which detained persons are held between arrest and passing of sentence should be under the sole control of prison authorities.

7. The detained person should have the right to consult, out of hearing of the officials, any qualified lawyer and medical practitioner of his choice.

8. Free access for the detained person to anyone other than a witness for the prosecution should be allowed under the rules laid down by the prison administration.

9. Freedom should be allowed for the detained person to write and receive letters and other communications. Correspondence with lawyers should not be censored.

10. The person under detention and his lawyer should be furnished

with full information about the charge at a reasonable time before the trial.

11. The use of microphones and/or similar appliances by which officials can overhear conversations between persons detained in custody should be prohibited.

12. Questioning of the detained person should be conducted under strict safeguards against constraint or torture, mental or physical. The detained person should have the right to maintain silence.

N. B. Three points arise in this connexion :

(*a*) It is a fundamental maxim of British criminal procedure that no-one should be compelled to convict himself. In order to accentuate the voluntary nature of the statement and to protect the individual from being induced to speak through fear or hope of advantage, police officers caution persons about to make a statement that it may be given in evidence.

(*b*) The use of narco-analysis (truth-drugs) is objected to for the following reasons, of which (i) is over-riding and implied in all the others :

(i) It constitutes an invasion into human personality the effects of which are not known, and a negation of the exercise of free will and choice.

(ii) It does not necessarily produce the truth.

(iii) It will tend to extend the powers of the executive beyond reasonable limits and may result in a growing reliance on such methods to the detriment of normal procedure of investigation.

(iv) The knowledge that such methods are being used may have undesirable effects on officials and private citizens alike.

(*c*) The use of lie-detectors is objected to on similar grounds.

13. Persons who have been wrongfully detained should be able to secure compensation by action in a civil court.

14. Witnesses must only be lodged in prisons if it is necessary for their own protection and the circumstances are exceptional. Such persons should enjoy as much freedom as is compatible with the circumstances.

15. Immediately after arrest a detained person should be informed orally and in writing of his legal rights as an accused or suspected person.

Although the question of power to arrest without warrant does not come within the scope of this subject, it may be worth mentioning that there is a strong case for having such powers limited and strictly defined by law.

INSTITUTE OF SHOPS ACTS ADMINISTRATION ANNUAL CONFERENCE, 1950

The conference, which was held recently at Scarborough, opened under the chairmanship of the Rt. Hon. the Earl of Munster (president of the Institute), and was accorded a civic welcome by the deputy mayor of Scarborough, Alderman F. C. Whittaker.

The president introduced the first speaker, Dr. Thomas Bedford, D.Sc., of the Medical Research Council's Environmental Hygiene Research Unit, who addressed the conference on the subject of " The Principles of Ventilation and Heating and their Application to Shops." This address outlined such matters as the significance of individual factors which make up the thermal environment in shop premises, *i.e.*, temperature ; humidity ; speed of movement of the air ; radiant heat emitted by fires ; walls and other surrounding surfaces.

At the afternoon session Mr. G. Graham Don, J.P., Barrister-at-Law, delivered a very interesting address on the subject of " The Enforcement of the Shops Acts as viewed from a Magistrate's Bench." Mr. Don outlined the origin and history of courts of summary jurisdiction and dealt with the many duties which had to be performed by a Justice of the Peace. The Summary Jurisdiction Acts and their function were discussed together with the position of the local government officer acting as prosecutor. Mr. Don went on to discuss the preparation of cases which involved the very careful handling of witnesses, examination and cross examination, and other aspects involved in the law of evidence. The attitude of the bench to certain types of infringement under the Shops Acts was discussed.

At the afternoon session on the second day, Mr. G. M. Butts, Solicitor of the Supreme Court, addressed the conference on the subject of " Shops and Wages Regulation Legislation," and endeavoured to clarify the position regarding a suitable dovetailing of the Catering Wages and Wages Councils Acts with the Shops Acts. This address was of especial interest as the Institute has on a number of occasions during recent months been asked to take up the matter with the Ministry of Labour regarding enforcement difficulties presented by the coming into force of the Catering Wages and Wages Councils Acts, and the Ministry has, in fact, promised to give consideration to any resolutions on the matter which the Institute may care to submit.

Mr. Butts at the outset briefly dealt with provisions relating to shop workers which were covered by the Shops Acts, Catering Wages Regulations, or Wages Regulation Orders and other regulations made under the Wages Councils Act. He made it quite clear that, although on the surface, it would appear to present a difficult administrative problem to ensure that the provisions of the respective Acts were being complied with in premises where they applied, yet, if the various provisions were correctly interpreted, confusion need not arise, as the Shops Acts dealt with physical conditions and hours of employment of shop workers, whereas the Catering Wages and Wages Councils Acts merely dealt with the question of remuneration, and as with the Factories Acts, the two aspects should be separately dealt with.

Mr. Butts further dwelt on the limitation of working hours imposed by the Shops Acts in relation to young persons and other shop assistants, and with the intervals for meals and rest. He discussed the implications with regard to the working of overtime and night work on specific occasions and also in connexion with Sunday employment and " days of rest." The variations which the Acts permitted, were fully discussed in relation to statutory half holidays, Bank Holidays and annual holidays, and he explained that it was quite feasible for an assistant to be legitimately employed under the Shops Acts and still satisfy the requirements of the various other Acts. Mr. Butts dealt with the question of wages in relation to ordinary remuneration and holiday remuneration in cases where special Orders were made under ss. 11 and 6, of the 1912 and 1928 Acts respectively ; under the Act of 1936, and also where the 1913 Act was adopted in the case of refreshment premises. Mr. Butts also dealt at some length with the specific provisions relating to the employment of young persons and in regard to the provisions applicable to registered Jewish traders.

On the afternoon of the same day, following this interesting address, Mr. E. J. Cope-Brown, town clerk to the Ealing Corporation, acting in his capacity as hon. solicitor to the Institute, reviewed certain of the decisions given by the Reference Committee on administrative problems submitted during the past twelve months.

He dealt, first, with the question of the safeguarding of the assistant's weekly half holiday in cases where orders had been made at seaside resorts, allowing shops to remain open on the half holiday for a limited period during the year. Secondly, he dealt with the position regarding an " unconscientious Jewish trader " and the steps to be taken by the inspector and the local authority in such cases. Thirdly, he dealt with a matter which prompted much discussion. This concerned the sale of fried fish and chips when sold merely as a " meal or refreshment " at a shop which had all the appearances of being an ordinary fish and chip shop, and upon which a special prohibition is imposed in regard to Sunday trading under the Act of 1936.

Another interesting matter which was discussed involved " part-time " employment in a café. The Shops Acts did not prescribe any definition of such " part-time " employment but other Acts had given certain indications as to " part-time " and " whole-time " workers in relation to the payment of wages.

Mr. Cope-Brown further dealt with the question of the exhibition of weekly half holiday notices in areas where no Weekly Half Holiday Orders were in force, and discussed the position regarding garage attendants who were employed as mechanics from Monday to Saturday, and on Sunday acted as shop assistants.

On the morning of the third day, Mr. W. R. H. Walters, B.Com., F.R.Econ.S., Lecturer in Economics and in Social Science, addressed the delegates on the subject of " The Retail and Wholesale Shop and Warehouse in Modern Society." This address provided something in the nature of a change from the previous days when matters of purely vocational concern were discussed. Mr. Walters provided a background to the working of the distributive trades and pointed out the reason for the forthcoming national census, which would be the first of its kind. Hitherto, only sample inquiries had been made which involved collection of data by interested private investigators. The speaker put forward several ideas which tended to confirm the impression that numbers of shops were possibly doing business on a small margin of profit, in some cases at a loss, due to the large number of shops distributing retail goods in comparatively small areas. The address gave reasons why in some cases a certain reticence was noticeable on the part of shopkeepers when asked to provide certain heating or cooling apparatus or to make special provision for sanitary and washing facilities and meals facilities for staff.

CENTRAL LAND BOARD'S PROCEDURE *RE* CLAIMS

Before the Central Land Board issue their determination of the development value in land which is the subject of a claim under Part VI of the Town and Country Planning Act, 1947, the district valuer issues on the Board's behalf a " notice of statement of proposed development value " on a form bearing a C.V. number.

If the claimant agrees to the district valuer's figures on this form, or if no objection is received by the district valuer, the Board issue their determination (form S. 2) after sixty days.

A claimant may object on a detachable part of the C.V. form within the sixty days and the grounds of objection will then be considered before the Board issue their determination.

If the claim has been wholly assigned to one assignee, form S. 2 is sent to the assignee. If only part of the claim has been assigned, the form is sent to the assignor and a copy to the assignee. In all cases where the Board have received notice that there was on July 1, 1948, a mortgage or rentcharge owner, he will receive a copy of S. 2.

Where a professional adviser is employed, the C.V. form and S. 2 are addressed to the claimant "care of" the professional adviser at the latter's address.

After a determination has been issued, an appeal may be lodged within thirty days. If no appeal is lodged, the determination becomes final.

If a professional adviser has been employed, and the conditions set out in para. 16 of the Board's pamphlet S.I.A. are satisfied, the claimant will receive the Board's contribution (on the scale laid down in the Appendix to S.I.A.) towards the fees he has incurred in the form of a Payable Order as soon as possible after the determination has become final.

CLOSING HOURS OF SHOPS DURING THE WINTER MONTHS

In Home Office circular 194/1950, attention is called to the provisions of the Shops Act, 1950, relating to the general closing hours of shops during the winter months, will operate from Sunday, November 5. These provisions are, by virtue of s. 7 of the Act, due to expire on December 10 next, but steps will be taken with the view of continuing them in force for a further period.

THE LOCAL GOVERNMENT LEGAL SOCIETY

The meeting of the home counties branch held on Saturday, September 30, 1950, took the form of a lecture on the history, constitution and legal characteristics of the Port of London Authority by Mr. Hubert Le Mesurier, M.C., Solicitor to the Authority, followed in the afternoon by a cruise through the Port of London. The chairman, Mr. H. B. Sales (deputy town clerk, Guildford) presided in the morning and at the conclusion of the lecture and discussion, a vote of thanks to Mr. Le Mesurier and the Port of London Authority was proposed by Mr. E. R. West and seconded by Mr. G. T. Thomas.

After lunch the members, accompanied by their guests, embarked on the yacht "St. Katherine" at Tower Pier, and proceeded down the Thames to Woolwich where they entered the Royal Albert and King George V Docks. Admiral Sir Alan E. Hotham, K.C.M.G., C.B., a member of the Authority, Mr. Le Mesurier and Mr. Tomlinson, chief information officer, accompanied the party and tea was served on board during the cruise. A number of members of the L.C.C. branch of the society also attended the meeting.

WEEK-END CONFERENCE AT IPSWICH

A week-end conference presided over by Sir Cecil Oakes, chairman of the East and West Suffolk courts of quarter sessions, was held at Belstead House, near Ipswich, on Saturday and Sunday, October 14 and 15. Magistrates, clerks to justices and others connected with the work of the courts in both divisions of the county attended. Invitations were also extended to the recorders and magistrates of the quarter sessions, boroughs of Ipswich, Bury St. Edmunds and Sudbury.

Addresses at the two sessions held on Saturday were given by Mr. Leslie M. Pugh (Clerk to the Justices for the City of Sheffield) who spoke on "Evidence" and by Sir Cecil Oakes on "The Office of Magistrate," which were followed by discussions.

The session on Sunday morning was set aside for open discussion on the many and varied problems affecting the work of justices on and off the bench.

In view of the success of the conference it was decided to hold two meetings in 1951—a whole-day conference in the middle of May at Bury St. Edmunds, and a week-end conference again at Belstead House in October.

HERALDIC DEVICE FOR CALNE

Calne Borough Council is applying through the Office of Heralds for Letters Patent for a grant of Arms for the Borough of Calne.

The draft design, which may be subject to small modifications, has been prepared by the *Somerset Herald*. It contains two heraldic boars with garlands of teazles around their necks as supporters, representing Calne industries (bacon and wool); the crest consists of a mural coronet, symbol of civic dignity, from which issues a mitre and two archbishops' staves, representing the See of Canterbury and the two archbishops who came from Calne. In the centre is a castle indicating that Calne is a Royal borough, with three white feathers on a black background, which were the arms of the Black Prince. The motto at the foot will be "Faith, Work, Service."

THE WEEK IN PARLIAMENT

From Our Parliamentary Correspondent

THE ARUNDEL CASE

At question time in the House of Commons, Mr. A. S. Moody (Gateshead, E.), asked the Attorney-General whether he would consider amending the provisions of reg. 1 (a) of the Prosecution of Offences Regulations, 1946, whereby it was the duty of the Director of Public Prosecutions to take over and carry on a prosecution when a warrant had been obtained by a private individual so that those who obtained the warrant could select their own solicitor and counsel for the proper presentation of the case to the examining justices for a committal for trial in view of the unsatisfactory manner the case was presented in the recent case at Arundel when the nominee of the Director of Public Prosecutions clearly invited the examining magistrates to decline to send the case for trial.

The Attorney-General, Sir Hartley Shawcross, replying in the negative, said that in view of the implications of the question, he would explain a little fully the circumstances which had given rise to it.

After the murder of Miss Joan Woodhouse at Arundel in August, 1948, a very full investigation was conducted by the police under the supervision of a most experienced officer from Scotland Yard. It did not produce any evidence upon which proceedings could be taken and at the coroner's inquest a verdict of murder by some person unknown was returned.

In the following year and after certain additional information had been received from a private detective, whose activities did not, however, bring to light any significant new evidence not already known to the police, the Director of Public Prosecutions asked that an entirely fresh investigation should be made into the whole case and that was conducted under the supervision of another experienced officer from Scotland Yard. The report of that investigation was submitted to the Director of Public Prosecutions who took the advice of Senior Treasury Counsel upon it. Counsel considered that the evidence did not justify a prosecution and with that view the Director agreed.

At that stage, since the matter had received some publicity, the Attorney-General called for the papers himself and personally read them. He agreed with the conclusion that the available evidence did not justify placing any individual upon trial for his life. Later, the justices at Arundel issued a warrant on the application of a private prosecutor. It then became the statutory duty of the Director of Public Prosecutions to take over the conduct of the proceedings. After a full hearing the justices decided that there was no *prima facie* case to answer.

"I am satisfied," went on Sir Hartley, "that it is in the public interest that the Director of Public Prosecutions, who is answerable to me as I am to the House, should have the duty of conducting these grave cases before the courts. In this country the duty of those who appear in the name of the Crown is to prosecute, not to persecute. They act, as has been said, as officers of justice putting all the facts, including those favourable to the accused, before the court. I am satisfied that the distinguished counsel who, on my personal nomination and not on that of the Director, conducted this case on behalf of the Crown before the justices at Arundel, discharged his duty in accordance with that high tradition."

ATTENDANCE CENTRES

Asked by Mr. H. Hynd (Accrington) what progress had been made with the provision of attendance centres under the Criminal Justice Act, 1948, the Secretary of State for the Home Department, Mr. Chuter Ede, replied that two attendance centres had been opened and a third would open shortly. Extension of the experiment must depend on experience of the actual running of those establishments, he added.

BEFORE THE JUSTICES (II)

(An answer, with apologies, to J.P.C. at p. 588.)

Who's the bloke who stands beside 'em
Proving knots in which he's tied 'em,
—(Looks as though he's petrified 'em)?
You remark.

He's the Mainstay of the Throne,
—Doesn't care a hoot for "Stone,"
—Has a note-book of his own;
—He's the Nark.

J.B.M.

NEW COMMISSIONS

BERKS COUNTY

Henry Edward Bennett, 20, Dog Lane, Hungerford.
Humphry Boulton, Cell Farm, Church Road, Old Windsor.
Mrs. Joan Hadfield Crook, 30, Meadowside, Pangbourne.
James Stephen Langford, Newtown, Hungerford.
Christopher Lewis Loyd, Lockinge.
Derek Aylmer Frederick Henry Howard Hartley Russell, The Manor, Bucklebury.
Commander Hugh Charles Skinner, Nautical College, Pangbourne.
Mrs. Leonora Phyllis White, The Post Office, Old Windsor.
Mrs. Gwendoline Elizabeth Whitworth, Eastbury Vicarage, Lambourn.

ISLE OF ELY

Thomas Hill Ellingham, 132, Wisbech Road, March.
Mrs. Helen Vera Fairweather, The Lodge, Haddenham, Ely.
Llewellyn Charles Harding, 4, Maple Grove, March.
Arthur Edward Morton, Ardross, Westwood Avenue, March.
Henry William Papworth, 16, Norwood Avenue, March.
Eric Herbert Robshaw, 42, Eastwood Avenue, March.
William Guy Ruston, Norden House, 47, New Road, Chatteris.
Joseph Smith, 8, Delve Terrace, Chatteris.
Miss Jessie Ffarington Tebbutt, Meyrick House, Station Road, Haddenham, Ely.

RADNOR COUNTY

Thomas Jasper Davies, The Shop, Rhosgoch.
Mrs. Gwladys Jones, The Manse, New Radnor.
Mrs. Nora Goodwin Knowles, Belmont House, High Street, Presteigne.
Evan Thomas Kinsey Morgan, Plas-yn-dre, Rhayader.
Alfred Herbert Sparey, Albion House, High Street, Presteigne.
Mrs. Victoria Winifred Wynne, The Rectory, New Radnor.

NOTICE

The next court of quarter sessions for the city of Hereford will be held at the Shirehall, Hereford, on Friday, November 10, 1950, at 10.30 *a.m.*

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 73.

SECTION 3, VAGRANCY ACT, 1824: AN ACQUITTAL

A twenty-three year old woman appeared before Mr. H. L. Williams, K.C., stipendiary magistrate at Swansea on August 23, 1950, charged under s. 3 of the Vagrancy Act, 1824, with being an idle and disorderly person in that being a common prostitute she had wandered in the public streets and behaved in a riotous manner.

For the prosecution, a police constable stated that she shouted and used a certain expression to a coloured man in a café. On another occasion he saw her enter a taxi with a coloured man, and she frequented public houses and associated with British and foreign seamen. The witness added that from his observations he was satisfied that she was living the life of a prostitute.

Another police constable stated that he saw defendant embracing a man in the passage of an hotel and a third police constable stated that he saw defendant frequently in the docks area in the company of different men. He had also seen her upon numerous occasions in the company of other convicted prostitutes. Another witness stated that she had been found sleeping in a railway carriage with a seaman a few days earlier.

The defendant denied that she was a prostitute, and a solicitor submitted on her behalf that the case had not been proved.

In delivering his judgment, the learned stipendiary magistrate stated that to succeed, the prosecution had to prove, first, that the woman was a prostitute, secondly, that she was wandering in the streets, and, thirdly, that she had behaved in a riotous manner. He said that the court was satisfied upon the second and third points, but the woman, although fond of the company of men, had not been convicted for indecency or soliciting, and there was no evidence before the court that she had gained financial benefit from the company she kept, and in these circumstances he dismissed the case.

COMMENT

The part of s. 3 of the Act of 1824 which makes it an offence for a common prostitute to wander in the public streets and to behave in a riotous or indecent manner has been the subject of many judicial decisions, due in part to the absence of a statutory definition of a prostitute or prostitution, and in part to the words "behaving in a riotous or indecent manner." The question of whether or not a woman, not previously convicted of soliciting, is a prostitute, may obviously be a difficult one to decide. The learned magistrate, in stressing the fact that there was no evidence before the court that the defendant had gained financial benefit from the company she kept, no doubt had in mind the decision of the Court of Criminal Appeal in *R.* v. *De Munck* (1918) 82 J.P. 160, that prostitution means the offering for reward by a female of her body commonly for the purpose of general lewdness.

It will be recalled that in that case a mother was charged with causing or encouraging the prostitution of her daughter, a girl then under the age of sixteen. It was proved that the mother was in the habit of going out with her daughter, of accosting men in the streets, and of taking them home, where she allowed them to be for a considerable time in rooms alone with her daughter, and that she received £2 from each man.

When arrested the mother requested that her daughter should be medically examined, and she was found to be a *virgo intacta* and it was argued in the Court of Criminal Appeal that a *virgo intacta* cannot be a prostitute.

Mr. Justice Darling (as he then was) in delivering the judgment of the court dismissing the appeal, stated that the term "common prostitute" is not limited so as to mean only one who permits acts of lewdness with all and sundry or with such as hire her when such acts are in the nature of ordinary sexual connexion but that prostitution is proved if it be shown that a woman offers her body commonly for lewdness for payment in return, and that it is immaterial if the man elects to gratify his sexual passion in some manner other than normal sexual intercourse.

The difficulties which may arise from the words "behaving in a riotous or indecent manner" are clearly shown in the old case of *R.* v. *De Ruiter* (1880) 44 J.P. 90. In that case, a prostitute was convicted under s. 3 of the Act of 1824, and the evidence for the prosecution was that in the early hours of the morning when on duty in the Haymarket, a police constable had seen the woman accost three men in succession. In each case she had put her arm into that of the man and had walked by his side until he threw her off, and a fourth man, being similarly treated, complained to the police. It was admitted that the woman had accosted the men for the purpose of prostitution.

The woman, having been convicted, appealed to Middlesex Quarter Sessions, where it was contended by counsel on her behalf that the mere accosting in the street was not an act of indecency and that the term implied something more than want of modesty . . . there must be an act of indecency. He pointed out that the conviction was for riotous and indecent conduct and urged that though the Act did not require both, a conviction for both must be treated like an indictment and as no riot had been proved the conviction was bad.

For the police it was urged that "riotous" in its ordinary sense was not confined to mean guilty of riot but simply noisy or licentious. Indecent meant simply offensive to decency and it was urged that the making of an overture for the purpose of prostitution was an indecent act.

The court, having retired, quashed the conviction without stating the reason.

In 1893, similar evidence led to the conviction of one Margaret Castro, and upon a sentence of one month's imprisonment being imposed, she appealed to London Quarter Sessions. Quarter Sessions allowed the appeal subject to the opinion of the Divisional Court as to whether, in the circumstances, the appellant was guilty of behaving in a riotous and indecent manner within the meaning of the said Act.

Lord Coleridge, C.J., stated that the case was one which the court must decline to hear as no point of law was involved, and he stressed that the offence was one which depended entirely on the circumstances and said that no doubt magistrates might differ as to the degree of indecency.

This case is reported in (1893) 57 J.P. 168.

In *R.* v. *Duke and Others* (1909) 73 J.P. 88, Mr. F. H. Mellor, K.C., sitting as Deputy Recorder at Liverpool Quarter Sessions, held that a prostitute who accosts men in the streets at night and beyond speaking to them and putting an arm through theirs, is guilty of no other riotous or indecent conduct, cannot be said to have brought herself within the ambit of that part of s. 3 of the Act which has been considered above.

In places where the Town Police Clauses Act, 1847, is in force, it is more simple to prosecute prostitutes under s. 28 of that Act.

The section, it will be recalled, creates innumerable offences all of which are banded together under the heading "Various nuisances." The section forbids common prostitutes or night walkers to loiter and importune passengers for the purpose of prostitution.

R.L.H.

PENALTIES

Warrington—October, 1950—assaulting the licensee of a public house (three defendants). First defendant to serve two months' imprisonment. Remaining two defendants each fined £5. First defendant, a twenty-two year old labourer, savagely attacked the licensee after being requested to drink up when time was called. He was aided by the two other defendants who held the licensee whilst he hit and kicked him.

Bath—October, 1950—stealing 14*s.* 8*d.*—six months' imprisonment. Defendant, a man of sixty-two with a bad record, took the money from the handbag of a woman as she knelt in prayer at Bath Abbey. Defendant had £3 10*s.*, in his pocket at the time of the theft.

Bath—October, 1950—selling meat to school canteens at prices exceeding the maximum (ten charges); making false statements relating to the value of meat supplied to schools and canteens (thirty-five charges)—fined £10, on each of the first ten charges and £2, on each of the subsequent thirty-five charges. To pay £21 costs. Defendant, a butcher of many years standing, secured a contract to supply meat to school canteens involving £300 a week, and gave the local authority a substantial discount. It was found on investigation that he had charged mutton at the price of lamb and bones at 1*s.* 8*d.* and 1*s.* 9*d.* instead of 2*d.*

Oxfordshire Quarter Sessions—October, 1950—(1) breaking into a house and stealing articles value £19 14*s.*, (2) stealing a Post Office Savings Book, (3) obtaining £3, from the P.M.G. by means of a forged instrument—borstal training. Defendant, a seventeen year old girl, asked for thirty other offences to be taken into consideration. Following appearances at Leeds and Bradford Juvenile Courts defendant was committed to an approved school from which she absconded. She later absconded from another approved school at Birmingham. The court expressed the hope that she would remain in borstal for a long time.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Arrest—Attempted false pretences—Offence reported to police—Preferring alternative charges after arrest.*

From time to time the police here receive intimation from the local office of the national assistance board that certain applicants for assistance make statements or representations which they know to be false, contrary to s. 52 of the National Assistance Act, 1948. It has been suggested to me that we should, on receipt of notification, detain such people in custody, without warrant, on the grounds presumably that this is an attempt to obtain money by false pretences, and the persons concerned are found committing the act. The National Assistance Act does not appear to give any power of arrest at all, and I should be glad if you would advise me on :

(1) Whether there is, in your view, a common law power of arrest for an attempt to commit false pretences, when the offence is found committed by other than a police officer, even though the person is detained by the Board's representative.

(2) Assuming there is such power, if it would be proper to arrest under that power and proceed with a charge under s. 52 of the National Assistance Act, which is triable summarily with consent.

And generally. J.TAURUS.

Answer.

A person committing an offence against s. 52 of the National Assistance Act, 1948, may well be guilty of attempting to obtain money by false pretences with intent to defraud. He cannot be convicted of both.

(1) There is no power of arrest for such an attempt.

(2) If a person is arrested without warrant he must be told the real ground for his arrest (*Christie* v. *Leachinsky* [1947] 1 All E.R. 567 ; 111 J.P. 224).

If he is properly arrested for and charged with one offence there is nothing to prevent other offences for which there is no power of arrest being preferred against him. The correct way to do this is to lay information for the other offences and have a summons issued to be heard when the defendant appears on the original charge. If he says that he is prejudiced by an immediate hearing an adjournment can be granted. In practice the further charges are sometimes preferred without the laying of any information or issue of any summons.

2.—Election—*Sitting councillor contesting different ward.*

Arising out of P.P. 2 at 114 J.P.N. 392, which point (whilst unusual) is of general interest because the circumstances might arise anywhere, will you please advise as to the position if councillor Y, sitting for ward B, is elected for ward A ? (1) Can he be forced to resign or otherwise vacate his seat for ward B, and if so by what legal means ? Or (2) will he sit simultaneously representing two wards, and if so will he have two votes ? A.P.M.

Answer.

We are sure the High Court would find some means of preventing (2) above, probably by *quo warranto* : *R.* v. *Patteson* (1832) 2 L.J.K.B. 33, though we cannot find that they have ever had occasion to do so, and we know no means of compelling Y to resign his original seat. Unless and until he attempted to occupy two seats simultaneously, we doubt whether the court would presume that he meant to do so: *R.* v. *Whitwell* (1792) 5 T.R. 85. The judgments and references in *R.* v. *Bangor (Mayor)* 1887 51 J.P. 51 ; S.C., *sub nomine Pritchard* v. *Bangor (Mayor)* (1888) 52 J.P. 564, are interesting in this context though not decisive. In our experience, a sitting councillor who stands in a casual vacancy does so for one of two reasons : either he wishes to sit for a more congenial ward, or he wants to prolong his term of office by stepping into the shoes of a councillor who had been subsequently elected. In either case he does resign his original seat, so that in practice the question put does not arise. If, after election in the casual vacancy, he changes his mind and does not resign his old seat, we think the position is that he is still in that seat, and there has been a failure to fill the casual vacancy.

3.—Landlord and Tenant—*Furnished Houses (Rent Control) Act*, 1946, *s. 5—Landlord and Tenant (Rent Control) Act*, 1949, *s. 11.*

I am aware that in your opinion s. 11 of the 1949 Act empowers a rent tribunal to grant an extension (other conditions being fulfilled) where :

(*a*) the lessor made the first reference, and

(*b*) the lessee, after service but before expiry of notice to quit, makes the reference and applies for extension.

Being unable to agree, I should appreciate your comment on these two queries :

(1) Section 11 of the 1949 Act is to be construed as one with the Act of 1946. Was it necessary to make any distinction in that section as to who made the original reference, since s. 5 of the 1946 Act, and particularly its manifest intention, cannot be ignored ?

(2) The words " by virtue of the contract " in s. 11 of the 1949 Act provide for the case where the lessor serves the notice to quit, let us say for simplicity, four months after the date of decision on the first reference. There is nothing then to prevent the notice to quit taking effect except the contract itself and during the currency of the notice the lessee is free to apply for extension. Is it permissible, when the real intention in including those words is plain, to read into them, in addition, an obscure intention to produce the result in (*b*) above ?

ALU.

Answer.

(1) We do not understand this query. It was not " necessary " to make any distinction in s. 11 as to who made the original reference, and s. 11 does not do so. Nor is s. 5 of the Act of 1946 ignored. Our opinion is that s. 11 of 1949 gives tribunals a power of protecting lessees in certain cases discussed at 113 J.P.N. 531. We there expressed doubt, however, this opinion was vigorously rejected by several members of long standing, who stated that they had always understood the words to mean that a " casting " vote was purely and simply a " second " vote ; thus, if the chairman had not voted on the matter, he could give a casting vote because he could not use his second vote, not having used his first vote. I think this is too narrow an interpretation of the section, and that the words " or a casting vote " are completely superfluous in such a case. ANE.

Answer.

Your interpretation is correct : the members you mention have perhaps misunderstood the section, by reading the word " or " as if it meant " that is to say," which it does not. The phrase means what it says, *i.e.*, " a second vote (where he has already voted once) or a casting vote (where he has not yet voted)." The second " a " may have been inserted in order to remove doubts on this point which formerly arose. The words " or a casting vote " are not superfluous, because the contingency does not arise until it is known that the votes are equal. If the Act had given him merely a second vote, he would be unable to give a casting vote where he had not voted at the same time as the other members.

4.—Local Government Act, 1933—*Second or casting vote.*

What is the precise meaning of the words " a second or a casting vote," as used in the Local Government Act, 1933 ? My opinion is that these words indicate two alternatives, *i.e.*, if an equality of votes arises on a matter in which the chairman has already voted, then he has a second vote, but if the chairman has not already voted upon the matter, then he has a casting vote. At a meeting last night, however, this opinion was vigorously rejected by several members of long standing, who stated that they had always understood the words to mean that a " casting " vote was purely and simply a " second " vote ; thus, if the chairman had not voted on the matter, he could give a casting vote because he could not use his second vote, not having used his first vote. I think this is too narrow an interpretation of the section, and that the words " or a casting vote " are completely superfluous in such a case. ANE.

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5.—Licensing—*Music and dancing—Licence excludes Sundays—Use of a " juke-box " on Sundays to avoid this exclusion.*

A licensee of an hotel is licensed for music and singing at his premises every day of the week bar Sunday. He has had installed in the public rooms a juke-box machine which is used on Sundays by customers placing a penny in the machine. He has had it installed purposely to overcome his music licence, he stating that it is not public music and consequently his music licence is not applicable to it.

I believe that you published a case dealing with juke-box machines in your *Review* some time during the latter part of 1949 and that it was dealt with by the Divisional Court or at some quarter sessions. I would greatly appreciate your opinion. N/YL.

Answer.

We have not been able to trace the case referred to, but we think that help can be obtained from the case of *Amusement Equipment Co. Ltd.* v. *McMillan* (1941) 85 S. J. 333 in which justices were upheld

in deciding that a fun fair, in which there was an automatic gramophone operated by inserting a penny, was used for public music.

If the juke box in question is so used that the music forms a substantial, not subsidiary, part of the public entertainment at the premises, justices are entitled to find that the premises are used for public music, and therefore must be licensed under the Sunday Entertainments Act, 1932.

6.—Magistrates—*Arrest in Scotland without warrant for offence in England—Refusal of Scottish police to hand over to English police without warrant duly backed.*

A man alleged to have committed an offence in England has been arrested without warrant by the Scottish police and is in custody there.

Application has now been made to my justices for the issue of a warrant for his arrest. The ground for the application is that the Scottish police refuse to hand over the prisoner on the assumption that a warrant is necessary to justify the removal of a prisoner from the jurisdiction of one court to another, and the applicant states that this opinion is maintained by the procurator fiscal supported by the judges, and moreover that a warrant is necessary in the terms of the Summary Jurisdiction (Process) Act, 1881. The offence alleged is one for which there is ample and undoubted power of arrest without warrant.

I can find no authority supporting the opinion of the Scottish police, and I shall be much obliged to have your learned opinion on the matter. JOG.

Answer.

There are always difficulties in answering with certainty questions which involve points of Scottish law. We do not know what the law is in Scotland as to the arrest there without warrant and subsequent disposal of a person who is alleged to have committed an offence in England. We think that the onus of showing that the Scottish police are entitled to, and should, hand the accused person over to the English police without an endorsed warrant lies on the English police. We can find no authority either way on the point, and we should advise, therefore, that the warrant be issued as requested.

The question of the arrest without warrant in England of a person accused of offences abroad was discussed in *Diamond* v. *Minter* (1945) 105 J.P. 181, and the case of *Mure* v. *Kaye* (1811) 4 Taunt 34 (in which arrest in Scotland was made for an alleged offence in England) was mentioned in the course of the arguments. But the particular point with which we are concerned was not dealt with.

7.—National Health Service—*Compensation for loss of office—Teacher in closed school.*

A has been employed by a local authority as a midwife teacher. The school has not been taken over as part of the national health service: it is to be closed and A has received notice terminating her employment. Is A entitled to compensation for loss of office and, if so, under what Act? Other situations have been offered by the local authority (but not in a similar capacity, being posts in which her special qualifications will not be required) and she is not disposed to accept. Does this in any way affect any such compensation? ABE.

Answer.

We doubt whether she has any claim. Presumably the council could have shut the school, quite apart from the national health service, *i.e.*, could have decided upon other educational methods, and it does not look (on the facts given) as if the loss of employment by staff discharged upon its being now closed is "attributable to the passing" of the National Health Service Act, 1946: *see* s. 63 (1) (*e*). On this view, your further question does not arise.

8.—Probation—*Order under 1907 Act—Not amended under Criminal Justice Act, 1948, sch. 8—Procedure now in case of fresh offence within period of probation.*

On July 7, 1949, X was charged at quarter sessions with larceny and housebreaking. He was bound over for a period of two years in the sum of £5 and was placed under the supervision of the probation officer. On June 26, 1950, X was convicted by a court of summary jurisdiction on a charge of larceny, and committed to quarter sessions to be held on July 6, 1950, for sentence under s. 29 of the Criminal Justice Act, 1948. Your advice on the following points will be appreciated:

(1) Is s. 8 of the Criminal Justice Act, 1948, applicable, and can action still be taken thereunder, notwithstanding the fact that the probation order has not been amended under para. 6 of sch. 8 of the Act. If not,

(2) Do the provisions of the Probation of Offenders Act, 1907, govern the procedure to be adopted now to bring X before quarter sessions for sentence on the original charge?

(3) Section 8 refers to the necessity of the defendant being "dealt with." Does this mean actually sentenced or would it include committal for sentence?

(4) If the probation order has not been amended as mentioned in (1) above, is it correct to say that s. 8 has no application in view of the definition of "probation order" in s. 80? JAE.

Answer.

(1) No.

(2) Yes.

(3) We think the proceedings must have been concluded and that a defendant committed for sentence has not been "dealt with" within the meaning of s. 8.

Section 8 (6) appears to cover the case of the defendant committed to quarter sessions for sentence.

(4) Yes, s. 8 has no application.

9.—Road Traffic Acts—*Absolute or conditional discharge—Criminal Justice Act, 1948, s. 7—No disqualification—Quelch v. Collett* [1948] 1 *All E.R.* 252.

When magistrates make an order of absolute or conditional discharge under s. 7 of the Criminal Justice Act, 1948, after conviction of an offence under s. 35 of the Road Traffic Act, 1930, can s. 12 (1) and (2) of the Criminal Justice Act, 1948, be read so as to absolve the offender from disqualification from holding a driving licence?

It has been argued that subs. (2) cannot be taken to over-ride subs. (1) when it says: "A conviction for an offence for which an order is made under this part of this Act discharging the offender absolutely or conditionally shall be deemed not to be a conviction for any purposes other than for the purposes of the proceedings in which the order is made." In apparent conflict with the words "other than for the purposes of the proceedings in which the order is made" of subs. (1) are the words of subs. (2): "The conviction of an offender who is discharged absolutely or conditionally as aforesaid shall in any event be disregarded for the purposes of any enactment which imposes any disqualification or disability upon convicted parties or authorizes or requires the imposition of any such disqualification or disability," though it is to be noted that the subsection commences with the words "without prejudice to the foregoing provisions of this section." The Criminal Justice Act, 1948, annotated by Mr. A. C. L. Morrison, C.B.E., and Mr. Edward Hughes (1949 Edn.) contains a note at p. 35 which says: "Effect of Conviction: The section absolves the offender from legal consequences which otherwise would flow from a conviction. It can, of course, be assumed that the magistrates applied their minds to the question whether extenuating circumstances existed and acted judicially upon evidence before them when exercising their discretion." JEL.

Answer.

We have no doubt that the effect of s. 12 (2) is to ensure that no disqualification can follow a conviction where the offender is placed on probation or is conditionally or absolutely discharged.

The words "in any event" make this clear, and it seems to us that s. 12 (2) is meaningless if it is to be read otherwise.

10.—Road Traffic Acts—*Construction and Use Regulations 56 and 94—Owner's duty to have weight and speed painted on—Liability of driver for use.*

Regulation 56 of the Motor Vehicles (Construction and Use) Regulations is concerned with the offence of failing to cause the unladen weight and maximum speed to be painted upon the nearside of a heavy motor car and the text of the regulation is as follows:

"The owner of a heavy motor car shall cause the weight of the vehicle unladen and the maximum speed at which it may be driven when not drawing a trailer to be painted or otherwise plainly marked upon some conspicuous place on the left or nearside of the vehicle."

Regulation 94 of the regulations reads as follows:

"If any person uses or causes or permits to be used on any road a motor vehicle or trailer in contravention of or fails to comply with any regulation contained in Part III of these regulations he shall for each offence be liable to a fine not exceeding £20."

Whilst it is appreciated that reg. 56 refers to "the owner of a heavy motor car," do you consider that the provisions of reg. 94 could be extended to reg. 56 thereby creating an offence by a person other than the owner of the vehicle? By way of example—could the driver of such a vehicle (not being the owner) be convicted of using the vehicle without the required weight and speed limit marks?

I should mention that reference to *Oke's Magisterial Formalist* shows no charge against a driver. A charge against the owner is contained therein. JEX.

Answer.

Regulation 56 puts a duty on the owner, but nowhere can we find any prohibition of the use on a road of a vehicle on which the weight and speed are not painted. We think, therefore, that the driver, as such, commits no offence even though the weight and speed are not painted on.

OFFICIAL ADVERTISEMENTS, TENDERS, ETC. (*contd.*)

INQUIRIES

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CITY AND COUNTY OF NEWCASTLE UPON TYNE

Appointment of Two Full-Time Male Probation Officers

APPLICATIONS are invited for the above appointments.

Applicants must be not less than 23 nor more than 40 years of age except in the case of a serving full-time probation officer. The appointment will be subject to the Probation Rules, 1949, and the salary will be in accordance with such rules and subject to superannuation deductions.

The successful candidate will be required to pass a medical examination.

Applications, stating age and qualifications and experience, together with copies of not more than two recent testimonials, must reach the undersigned not later than Thursday, November 30, 1950.

F. MORTON SMITH,
Secretary to the Probation Committee.

Magistrates' Courts,
Market Street,
Newcastle upon Tyne, 1.

STAFFORDSHIRE COMBINED PROBATION AREA

Appointment of Full-Time Probation Officer

APPLICATIONS are invited for the appointment of a full-time male Probation Officer in the area of the Staffordshire Combined Probation Committee.

The appointment will be subject to the Probation Rules and the salary will be paid in accordance with the Rules together with a travelling allowance. The salary will be subject to superannuation deductions and the selected candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and accompanied by copies of not more than three recent testimonials, must reach the undersigned not later than Saturday, November 18, 1950.

T. H. EVANS,
Clerk of the Peace.

County Buildings,
Stafford.

BOROUGH OF BROMLEY

Legal Assistant

APPLICATIONS are invited from Solicitors for the appointment of Legal Assistant at a salary in accordance with Grade A.P.T. V (a) (£550–£610) of the National Scales of Salaries with the addition of London Weighting. Experience in local government is not essential.

The successful candidate will be required to pass a medical examination and the appointment will be terminable by one month's notice on either side.

Applications, endorsed "Legal Assistant," and stating age, with full particulars of qualifications and experience, together with the names and addresses of two persons to whom reference can be made, must be delivered to the undersigned not later than November 30, 1950.

Canvassing, directly or indirectly, will be a disqualification.

S. CRITCHLEY AUTY,
Town Clerk.

Municipal Offices,
Bromley, Kent.

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